Non-commercial losses

See how you may be able to offset your business loss against other income if you're a sole trader or in a partnership.

What is a non-commercial loss?

See how you may be able to offset your business loss against other income like salary.

Offset or defer the loss – individuals or sole traders

How individuals or sole traders can work out if their non-commercial loss can be offset or needs to be deferred.

Offset or defer the loss – partnerships

Explains the income requirement and the four tests for partnerships.

Commissioner's discretion

When and how to apply for a Commissioner's discretion to offset a business loss against income from other sources.

How to offset your losses

If you have exempt income, you generally must reduce your losses by that amount.

How to defer your losses

Learn how to defer your business activity loss in the current year because of the non-commercial loss rules.

QC 33774

What is a non-commercial loss?

See how you may be able to offset your business loss against other income like salary.

Last updated 5 March 2026

Media: Understanding non-commercial losses https://tv.ato.gov.au/ato-tv/media?v=bi9or7odhsaggq (**Duration:** 02:02)

Definition of a non-commercial loss

A **non-commercial** business loss happens when you run a side business or activity that costs more money than it makes. In most cases, this loss can't be used to reduce your taxable income from other sources (like your salary or wages) for that year unless specific conditions are met. If you can't deduct the losses, you can defer it until you make a profit.

If you are a sole trader, consider the following rules to work out of your loss can be offset or needs to be deferred. For a partnership, the non-commercial loss rules apply to individually to each partner.

Rules for a non-commercial loss

You need to be running a legitimate business and you need to meet certain income requirements.

Check if you are running a business

The activity needs to be a legitimate business, not just a hobby. To understand more, see Are you in business?

Additionally, you must have:

- decided to start the activity with the purpose of making a profit
- acquired enough tools, resources, or assets to run the business properly
- actually started operating the business in a commercial way (not just preparing for it).

Income requirement

To claim the loss in the current year, your total taxable income (including salary, reportable benefits, super contributions, and investment losses) must be under **$250,000**.

For more information, see The income requirement.

Four tests to claim the loss

If your income is under $250,000, you need to pass one of the following 4 tests:

- **Assessable income test –** assessable income from your business activity during the financial year must be at least $20,000 (or a reasonable estimate for part year trading).
- **Profit test –** your business made a profit in 3 out of the past 5 years.
- **Real property test –** you use real property valued at least $500,000 in your business activity on a continuing basis.
- **Other assets test –** the value of your assets you use in the business are worth at least $100,000 (not including real property or some vehicles).

If you don't meet one or more of these tests, the loss usually needs to be deferred (saved for later).

For more information, see Four tests.

Excepted business activity

If your business involves **primary production** (for example, farming) or **professional arts**, and your income from other sources is under $40,000, you might qualify to use the loss immediately. We call these excepted business activities.

Commissioner’s discretion

If you don’t meet the income requirement or pass any of the 4 tests, you can apply for the Commissioner’s discretion.

This may be granted if the nature of your business means it needs more time to become profitable (lead time), or there are special circumstances (for example, natural disasters) outside your control.

If a special circumstance like a flood, bushfire, or government-imposed lockdown caused your loss for the income years between 2019–2023 financial year, special rules may apply to let you offset the loss in specific years without extra approvals.

For more information, consider Practical Compliance Guideline PCG 2022/1 *Non-commercial business losses – Commissioner's discretion regarding flood, bushfire or COVID-19*.

If you don’t meet the rules

If you don't meet the non-commercial loss rules, you can't use the loss to reduce other income in the same year. Instead, the loss is carried forward and can only offset income from the same activity in future years.

If you meet the non-commercial loss rules in a future year, the loss is no longer deferred and can be offset against other income in that year. If the business activity ceases, any deferred loss is effectively forfeited unless the same, or a similar, business activity restarts.

If you run more than one business

If you are running similar business activities you can group them together when considering the non-commercial loss rules (for example, for 2 farming activities).

Different businesses are assessed separately (for example, farming and carpentry). The rules apply individually to each activity.

For more information, see:

- TR 2001/14 *Income tax: Division 35 – non-commercial business losses*
- TR 2007/6 *Income tax: non-commercial business losses: Commissioner's discretion.*

QC 76107

Offset or defer the loss – individuals or sole traders

How individuals or sole traders can work out if their non-commercial loss can be offset or needs to be deferred.

Last updated 8 January 2026

Non-commercial loss rules

Work through the following non-commercial loss rules to work out if you need to:

- claim and offset the loss against your other income, such as salary and wages
- defer the loss and claim it in a later year.

1. Are you in business?

To claim a loss or apply for the Commissioner's discretion to allow you to claim a loss, your activity must be 'in business'.

In addition, you normally need to have commenced the business activity. Broadly, business is considered 'commenced' if you have made the decision to start the business and both:

- acquired the minimum level of assets to start running your business
- started your business activities.

Example: commencing business operations

Bob wants to grow pumpkins as a business.

In the first year, Bob built a shed, repaired fences and cleared a part of the block. In the second year, he planted pumpkin seeds on a commercial scale.

In the first year, the venture didn't have the significant purpose or character of a business venture as the activities were done in preparation.

In the second year, with the planting of the pumpkin seeds, the activities constitute the commencing of business operations.

2. Similar business activities

If you are carrying on more than one business activity and they are similar business activities, you may group them together when considering the non-commercial loss rules. For example, you could group activities if you decided to plant and sell corn in addition to pumpkins.

If you are running multiple business activities that are not similar (for example, if Bob decided to build and sell cubby houses in addition to farming pumpkins), you must apply the non-commercial loss rules separately to each activity. This may mean that you can claim a tax deduction for a loss on one business activity but not for the other.

3. Excepted activity

If your loss-making business is in primary production or in professional arts (we call these 'excepted business activities'), **and** your assessable income from other sources is less than $40,000 (excluding any net capital gain), you can offset your losses from your other income.

4. Income requirement

For you to be eligible to offset your losses in the current year, the total of your taxable income, reportable fringe benefits, reportable super contributions and total net investment losses must be less than $250,000. Find out more about the income requirement.

If you don't meet the income requirement you must defer the loss. You can apply for the Commissioner's discretion in limited circumstances

5. Four tests

If you meet the income requirement, you then need to check if you pass any of the four tests. If you pass, you can offset the loss in the year in question.

If you don't pass **any** of the four tests, you must defer the loss. You can apply for the Commissioner's discretion in limited circumstances.

6. Commissioner's discretion

If you either don't meet the income requirement or you don't pass any of the four tests, you can apply for the Commissioner's discretion to allow you to claim and offset the loss against your other income in the current year.

The Commissioner will only exercise the discretion in limited circumstances if either of the following apply:

- There are special circumstances outside your control that have prevented you passing one of the four tests.
- Due to the nature of the business, there is a lead time before your business can pass one of the four tests or make a profit.

If there are no grounds for the Commissioner to exercise the discretion, you need to defer the loss for that income year.

Similar business activities

Work out if you can group similar business activities together when considering the non-commercial loss rules.

Excepted business activities

Certain primary production and professional arts business activities are referred to as excepted activities.

The income requirement

Work out if the sum of the four elements of your income is less than the $250,000 income requirement.

Four tests

To offset your business loss against other income, you and your business need to pass one or more of these four tests.

QC 104055

Similar business activities

Work out if you can group similar business activities together when considering the non-commercial loss rules.

Last updated 7 April 2025

Determining if business activities are similar

If you are carrying on more than one business activity and they are similar, you may group them together when considering the non-commercial loss rules. To decide whether business activities are similar, you could consider:

- the assets they use
- the nature of their operations
- their location
- the goods or services provided
- the market conditions for the goods and services
- any links between the activities of the two businesses.

Activities that may be similar include:

- grazing sheep and grazing cattle
- growing grapes and growing olives
- manufacturing shirts and manufacturing jeans.

Activities that may not be similar include:

- manufacturing goods and farming

- repairing cars and making furniture
- growing potatoes and providing contract services.

The above list of characteristics is not exhaustive. For more details and examples on when business activities are considered to be similar, see TR 2001/14 *Income tax: Division 35 – non-commercial losses*

If the business activities are not similar

If you are running 2 business activities that are not similar, they must independently pass a test for deducting a loss. This may mean that you can claim a tax deduction for a loss on one business activity but not for another.

QC 55241

Excepted business activities

Certain primary production and professional arts business activities are referred to as excepted activities.

Last updated 7 April 2025

An exception to the non-commercial loss rules allows net losses from those excepted activities to be claimed in the year incurred.

To be eligible to offset your loss from a primary production or professional arts business activity, your assessable income from other sources not related to that particular business activity in the income year must be less than $40,000, excluding any net capital gains.

Primary production business

Primary production business activities include:

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

Professional arts business

A professional arts business is a business you carry on as:

- an author of a literary, dramatic, musical or artistic work

- a performing artist
- a production associate.

You must also consider what is not a professional arts business.

For more information, see Are you in business?

Author of an artistic work

The term 'author' is a technical term from copyright law. An individual needs to be the author of the work. As a general rule, the author of an original literary, dramatic, musical or artistic work is the person who reduced, to a material form, the expression of an idea.

An author can, for example, be a novelist, artist, sculptor, architect, composer or photographer.

The material expression of the idea (the 'work') must be in an original form for the person who reduced it into material form to be considered the author. Original in this sense does not mean novel or inventive, nor does it require a particular standard of quality, unless that is a requirement of the work itself; for example, works of artistic craftsmanship.

The work must have originated from the author as a result of their own unaided efforts and they must have used some skill or labour in producing the work. This means that a person who copies another's work is not the author of that work; nor is a pure functionary, such as a typist or printer.

In order to be an author of a literary, dramatic, musical or artistic work, the individual must have created an original work in a material form. There must be an element of originality in the material expression – it cannot be a direct copy – and the material expression must be a 'work' that originated from that person. For example, the author of a musical work is its composer and the author of an artistic work is the artist, sculptor or photographer who created it.

Performing artist

The term 'performing artist' is defined in the *Income Tax Assessment Act 1997*.

You are a performing artist if, as part of your profession, you present or perform in front of an audience:

- music
- a play
- dance
- an entertainment

- an address
- a display
- a promotional activity
- an exhibition
- any similar activity.

You may also be a performing artist, even if you do not perform in front of an audience, if you appear in (or on) a film, tape, disc, or television or radio broadcast.

Production associate

The term 'production associate' is defined in the *Income Tax Assessment Act 1997*.

You will be a production associate if you provide artistic support – as distinct from technical input – for any of the activities mentioned in the definition of a Performing artist. An example of technical input would be a camera operator or stagehand.

You may be a production associate if you are:

- an art director
- a choreographer
- a costume designer
- a director
- a director of photography
- a film editor
- a lighting designer
- a musical director
- a producer
- a production designer
- a set designer
- any person who provides similar services to the activity.

What is not a professional arts business

Running an art gallery

In general terms, a professional arts business is a business you carry on as an author of an artistic work. This can be the artist, sculptor or photographer who created the work.

If you create artwork and sell only your artwork at your private gallery (and your gallery qualifies as a business, rather than a hobby) you may be carrying on a professional arts business.

If you own an art gallery and you do not create or exhibit your own work, it's unlikely you are carrying on a professional arts business.

Direct seller

Direct sellers are not considered to be carrying on a performing artist business.

Even if your business includes elements of a 'performing artist', you are not a performing artist. The overall impression must be that the activities are sufficiently substantial in themselves to constitute the carrying on of a business as a performing artist.

You may use your intellectual, artistic, musical, physical or other personal skills in the presence of an audience, but it is unlikely that you would be considered as working in the entertainment field or performing arts industry. Your primary objective is to sell your products, not to entertain your audience.

QC 22537

The income requirement

Work out if the sum of the four elements of your income is less than the $250,000 income requirement.

Last updated 7 April 2025

Taxable income

Your taxable income is your assessable income less your allowable deductions for an income year. For the purposes of the income requirement, any assessable First home super saver (FHSS) scheme released amount and any losses from the business activity are ignored. That is, any:

- business losses are added back to your taxable income, if they were already included in the calculation of your taxable income
- assessable FHSS released amount is subtracted from your taxable income, if it was already included in the calculation of your taxable income.

If your taxable income is a loss after adding back the business losses and subtracting the FHSS amount, use zero for this part of the calculation.

Example: taxable income calculation

Alex has a salaried job. She also carries on a natural therapies business. Alex's taxable income for the year is $200,000. The calculation of her taxable income includes assessable FHSS scheme released amount of $20,000 and a business loss of $6,000.

For the purposes of the income requirement, Alex's calculation of taxable income should not include her:

- assessable FHSS scheme released amount
- business loss amount.

Therefore, Alex will have to subtract the assessable FHSS scheme released amount of $20,000 from, and add the business loss of $6,000 to, her taxable income of $200,000. As a result, Alex's taxable income for the purposes of the income requirement is $186,000.

Reportable fringe benefits

Your total reportable fringe benefits are shown on your payment summaries. If the total amount is less than the reportable fringe benefits threshold, it will not be shown on your payment summary and would not form part of the calculation.

Reportable super contributions

Reportable super contributions include your:

- reportable employer super contributions
- personal deductible contributions

Reportable employer super contributions

Reportable employer super contributions are salary sacrificed super contributions or other contributions your employer makes to a super fund on your behalf where:

- you influenced the amount or rate of super your employer contributes
- the contributions are additional to the minimum contributions they must make under:

- super guarantee law
- an industrial agreement
- the trust deed or governing rules of a super fund, or
- a federal, state or territory law.

If your employer makes reportable employer super contributions for your benefit, they must include the total amount of these contributions on your payment summary for the relevant income year. You must then include this amount in your income tax return.

Check with your employer for details of your salary sacrificed super contributions.

Personal deductible contributions

Your personal deductible contributions include any personal contributions you made to a super fund for which you can claim an income tax deduction on your individual tax return.

If you made a personal contribution and you did not claim a deduction for it, that amount is not a reportable super contribution.

Example: reportable super contribution

Fred is self-employed and not eligible for super guarantee. He earned $50,000 as a plumber. Fred contributed $1,000 to his super fund and lodges a notice of intent to deduct, which is acknowledged by his super fund. He can claim a personal income tax deduction of $1,000. He claims no other deductions.

When Fred works out his other income for the non-commercial losses income requirement, he adds his reportable superannuation contribution ($1,000) to his taxable income ($49,000) so his other income is $50,000.

For more information, see How reportable superannuation contributions work.

Total net investment losses

You will have a total net investment loss when the amount of allowable deductions you claim for your financial investments and rental properties is more than the gross income you receive from those investments. It doesn't matter whether the investment is overseas or in Australia.

Your total net investment loss is the sum of your net investment losses from the following two types of investments:

- rental property investments, such as negatively geared rental properties
- financial investments, such as negatively geared share portfolios.

When working out your net investment losses, you can't use net income from either your:

- rental property investment to offset a loss from your financial investment
- financial investment to offset a loss on your rental property investment.

Example: working out other income for the income requirement

Joe has three sources of income:

- employment as a web developer of $150,000 (with no allowable deductions)
- a negatively geared share portfolio with a combined net loss of $10,000
- rental income, with an assessable income of $25,000 and $10,000 allowable deductions.

Joe's taxable income is $155,000 ($150,000 salary + $15,000 net rental income − $10,000 share portfolio loss).

When Joe works out his other income for the non-commercial losses income requirement, he:

- includes his taxable income of $155,000
- ignores his net rental income of $15,000 as it is already included in his taxable income
- includes his total net investment loss of $10,000.

The total net investment loss is added back to Joe's taxable income so his other income for the non-commercial losses income requirement is $165,000 ($155,000 taxable income + $10,000 share portfolio loss).

Joe meets the income requirement for the non-commercial loss rules as his income is less than $250,000.

Next steps in assessment

If you:

- meet the income requirement, you must also pass one of the four tests to be able offset your loss
- do not meet the income requirement, you may seek the Commissioner's discretion in limited circumstances.

QC 55240

Four tests

To offset your business loss against other income, you and your business need to pass one or more of these four tests.

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If you meet the income requirement and pass one or more of the four tests, you can offset your business losses against your other income in the relevant year.

Be aware:

- that similar business activities can be grouped together to meet one of the four tests
- of the excepted activities for primary production or professional arts business activities where your other income is below the threshold.

Assessable income test

To pass the assessable income test, assessable income from your business activity during the financial year must be at least $20,000.

Assessable income includes:

- ordinary income – for example, the gross earnings (excluding GST) of a business activity, and
- statutory income – for example, capital gains.

If you pass the assessable income test, you can claim your losses in the current year.

Any income normally included as assessable income from the sale of depreciating assets in the normal course of business is included in assessable income for this test. This also applies for capital gains and fuel tax credits.

Part year trading

If you were in business for less than a year, or you stopped carrying on your business activity during the year, you can make a reasonable estimate of what your assessable income would have been for that full year. If that amount is greater than $20,000 then you are considered to have met the assessable income test.

Making a reasonable estimate

There is no set formula to make a reasonable estimate of your assessable income. However, you should consider relevant factors such as:

- orders you have received
- forward contracts you have entered into
- the size of your business activity
- the amount you have invested in the business activity
- the type of business activity you are engaged in, and the typical income patterns for that industry
- how your actual income would translate into an annual income on a pro-rata basis
- cyclical or seasonal patterns in your business area, and the effect they would have on your annual income.

Example: Making a reasonable estimate

In October 2016, Slaide started operating a shirt manufacturing business called Sonny's Shirts. Slaide's income from Sonny's Shirts was $16,000 for the year, however, the business did not operate for the full income year.

To work out his assessable income for the year, Slaide makes a reasonable estimate of what his income from Sonny's Shirts would have been if the business had operated for the full income year.

Slaide considers relevant factors of the business activity, such as the number of orders and seasonal demand, and works out the reasonable estimate of his assessable income is $22,000.

As Slaide's reasonable estimate of assessable income is greater than $20,000 he passes the assessable income test and can claim the losses in the current year.

An estimate that is reasonable when it was made will continue to be regarded as reasonable, even if it later proves to be incorrect.

However, you should request an amendment if you later realise that the loss should have been deferred, both because:

- you have made an unreasonable estimate based on the information you had at the time of the estimate
- your business activity did not meet the assessable income test or any of the other tests.

You must generally make the request within 2 years of the date of issue of the original notice of assessment.

We may review your estimate. If it is not reasonable, your income tax liability may be reassessed and penalties may be imposed.

Next steps

- If you pass this test, see How to offset your losses
- If you don't pass this test, check if you pass any other test
- If you do not pass any test

Profits test

Your business will pass the profits tests if it has made a tax profit in 3 out of the past 5 years (including the current year).

When calculating the profit, exclude any loss from that business that you have deferred from earlier years.

If a business makes a tax profit for 3 consecutive years it will pass the profits test for the next 2 years regardless of whether it makes a loss.

Profits made under a previous owner can be taken into account as the test examines the activity and not your ownership of it. This is provided the change in ownership, or the terms and conditions of a sale of the business, do not result in a loss of identity for the business activity.

Example: profits test

Nguyen buys an orange orchard from Steve as a going concern on 1 July 2017. At the end of the 2018 financial year, Nguyen's business has produced a $7,500 tax loss. The business records show that in the previous years, the orchard produced tax profits and losses:

- 2017 – $17,500 profit
- 2016 – $15,000 profit
- 2015 – $4,000 loss
- 2014 – $16,000 profit.

Nguyen needs to include the 2018 financial year when examining the profits test. In the period 2014 to 2018, 3 years have produced a tax profit. Nguyen meets the profits test.

Next steps:

- If you pass this test, see How to offset your losses
- If you don't pass this test, check if you pass any other test
- If you do not pass any test

Real property test

You will pass the real property test if real property of at least $500,000 in value is used in your business activity on a continuing basis.

Real property includes:

- land
- structures, such as buildings, fixed to the land
- interests in that property, such as a lease of that property.

Real property, for the purposes of this test, does **not** include:

- a dwelling and adjacent land that is used mainly for private purposes
- fixtures owned by you as a tenant.

To work out whether your real property assets are at least $500,000 in value, you may value them at either the:

- reduced cost base
- market value

What constitutes use on a continuing basis will depend on your business circumstances. However, you can't include the value of an asset used:

- on a short-term basis
- for a one-off task
- through an agreement for intermittent use on an hourly, daily, weekly, monthly or other short-term basis.

For more information, see:

- Dwellings, structures and adjacent land
- How to value assets

Next steps:

- If you pass this test, see How to offset your losses
- If you don't pass this test, check if you pass any other test
- If you do not pass any test

Other assets test

You will pass the other assets test if the value of the 'other assets' you use in your business on a continuing basis is at least $100,000. Only certain assets are included in this test and some are specifically excluded.

The included assets are:

- items of plant or equipment
- items of trading stock
- assets that are leased from another entity
- trademarks, patents, copyrights, and similar rights.

Excluded assets are:

- assets that are real property or interests in real property (these are included in the real property test)
- cars, motorcycles and similar vehicles.

When assessing the value of these assets for the test you must use the same valuation method that you use for income tax purposes (this does not apply if you are valuing leased assets).

If the asset is partly used for other purposes, you need to apportion the value of the asset for the part that is used in the business activity. For more information, see How to value assets.

Next steps:

- If you pass this test, see How to offset your losses
- If you don't pass this test, check if you pass any other test
- If you do not pass any test

If you do not pass any test

If you satisfy the income requirement or the income year was before 2009–10 but your business activity doesn't pass any of the four tests, you can seek the Commissioner's discretion if either:

- your business activity would have passed one of the tests except for special circumstances outside your control

- your business has commenced, but due to its inherent nature there will be a lead time before you could be expected to make a tax profit or pass one of the four tests.

How to value assets

Explains the income requirement and the four tests for partnerships.

QC 33771

How to value assets

Explains the income requirement and the four tests for partnerships.

Last updated 7 April 2025

Valuing assets for the real property test

You may value your real property assets at either their:

- reduced cost base
- market value.

For more information, see:

- What is the cost base?
- Market valuation for tax purposes

Leasing your business premises

If you lease real property and you use it on a continuing basis in your business activity, you may include the market value or the reduced cost base of either the lease or the underlying real property, in the total you use to meet the $500,000 threshold.

In calculating the market value of the lease, you may take into account such things as:

- the amount of your lease payments
- the term of the lease
- any premium payable.

In calculating the reduced cost base of the lease, you may take into account any premium paid for entering the lease, but not the value of the periodical lease payments.

If you are leasing your business premises and installing your own fixtures, these fixtures are subject to the rules for the other assets test.

Assets used in more than one business activity

If you use real property in 2 or more business activities that are **not** similar, you must divide the value of the property between the different activities. The proportion of the real property value that is assigned to each activity will then count towards the total real property value for that activity.

If you undertake similar business activities in the same year, you may combine the value of the real property you use in those activities to meet the $500,000 threshold.

Using real property for private purposes

If you use real property partly for business and partly for private purposes, you only include the value of that portion used for business purposes.

Valuing assets for the other assets test

You will pass the other assets test if the value of the other assets you use in your business activity on a continuing basis is at least $100,000.

You can count the value of 4 types of asset. They are valued in different ways.

When assessing the value of these assets for the test, you must use the same valuation method that you use for income tax purposes. This does not apply if you are valuing leased assets.

Table: 4 asset types and how you value them

Asset type	Valued according to the:
Depreciable assets	Written-down value of the asset
Trading stock	Value of each item of trading stock on hand at the end of the income year, assessed by any of the following: • cost • market selling value • replacement price

Leased assets	Amount of the future lease payments you are irrevocably committed to (minus any interest component to the payments)
Trademarks, patents, copyrights and similar rights	Reduced cost base of the asset

For more information, see:

- Assets excluded from the test
- When to value assets
- Use on a continuing basis
- Lease payments
- Assets installed in a leased property
- Assets used in more than one business activity
- Assets used for private purposes

Assets excluded from the test

For the purposes of passing this test, exclude the value of:

- real property assets you took into account for the real property test
- interests in real property that you took into account for the real property test
- cars, motorcycles and similar vehicles.

All-terrain vehicles (ATVs), so-called ag bikes and bull catchers are considered to be similar vehicles to cars and motorcycles and are therefore excluded.

Assets under construction would not normally be available for continual use in a business and would therefore also be excluded.

When to value assets

You should normally value your assets at the end of the income year.

However, if you ceased your business activity during the year, you should value the asset at the time the activity ceased or, if you sold or disposed of the asset before that time, you should value the asset at the time of disposal.

Use on a continuing basis

What constitutes use on a continuing basis will depend on your business circumstances.

However, you can't include the value of an asset used:

- on a short-term basis
- for a one-off task
- through an agreement for intermittent use on an hourly, daily, weekly, monthly or other short-term basis.

Lease payments

Payments already made, or for which a binding contract has been made, will be considered to be irrevocably committed payments.

Assets installed in a leased property

If you lease property and install fixtures (such as shop fittings) you may count these assets among your other assets, provided that you retain ownership of them. You should value them at their written-down value.

Assets used in more than one business activity

If you use an asset in 2 or more business activities that are not similar, you must divide the value of the asset between the different activities. The proportion of the asset value that is assigned to each activity will then count towards the total value of the assets for the activity.

If you undertake similar business activities, you may combine the value of the assets you use in those activities to pass the $100,000 threshold.

Assets used for private purposes

If you use an asset partly for business and partly for private purposes, you only include the value of that portion used for business purposes.

QC 16244

Offset or defer the loss – partnerships

Explains the income requirement and the four tests for partnerships.

Last updated 7 April 2025

If you are a partner in a partnership, you – as an individual – may offset your share of a partnership loss against your other income, subject to the non-commercial loss rules.

Income requirement

The non-commercial losses income requirements are applied to the individual partners the same as for an individual or sole trader.

Assessable income test

If you are a member of a partnership and all the other partners are individuals, the assessable income of the whole partnership must be at least $20,000 before the individual members can deduct losses.

If an individual member earns assessable income from the business activity outside of the partnership, that assessable income can be taken into account by that member only.

If you have partnership members that are companies or trusts, you must exclude their share of the assessable income.

If a partnership carries on more than one business activity, the income and deductions must be accounted for separately for each unless they are similar activities.

For more information, see Taxation Ruling TR 2003/3 *Income tax: Non-commercial losses - application of subsections 35-10(2) and 35-10(4) of the Income Tax Assessment Act 1997 to business activities carried on in partnership.*

Example: assessable income test

Jarli is in business in partnership with Ross and a company. The partnership earned $22,000 assessable income last year from the business activity.

$4,000 of that income went to the company and $9,000 to each individual in the partnership. Therefore the partnership income would not be sufficient to allow Jarli to pass the income test ($22,000 – $4,000 = $18,000).

However, Jarli has an interest in the business activity outside the partnership. He received $3,500 in assessable income from this non-partnership interest, so that the total assessable income he can count for the purposes of this test is $21,500 ($3,500 + $9,000 + $9,000). He also meets the income requirement; therefore, he is able to deduct a loss.

Ross can't take into account the non-partnership assessable income earned by Jarli for the purpose of this test. Ross does not satisfy the assessable income test.

Profits test

If you are carrying on a business activity in a partnership, you will be able to claim a loss if **your** income from the activity has been greater than your tax deductions for the activity for at least 3 out of the past 5 years (including the current year) and you meet the income requirement.

In calculating your income and deductions, you must consider both your income from the partnership and any income you may have earned in your own right from that activity.

Members of a partnership may be affected differently.

Example: partnership and the profits tests

Neha and Raj operate a business activity as a partnership. This year, Neha and Raj both meet the income requirement. They each receive $5,000 in income from the partnership and have received the same amount for the past 4 years.

Raj does not have any tax deductions for his part in the business, so he has made a profit every year – therefore, has no loss to offset.

Neha took out a loan to finance her investment in the partnership and is paying $8,000 a year in interest. Therefore, she has made a net loss of $3,000 every year for the past 4 years. However, she does not pass the profits test so can't offset her losses.

Real property test

If you are a member of a partnership and all the other partners are individuals, the value of the real property used in the whole partnership business must be at least $500,000 before the individual members can deduct losses.

If you have partnership members that are companies or trusts, you must exclude the value of any real property attributable to them.

You must also exclude the value of any of the property that is owned by individual partners in their own right. However, you can include the value of any property you own outside the partnership that the business uses on a continuing basis.

Example: partnerships and the real property test

John, Bill and George are equal partners in a real estate business. The business has 5 offices.

The partnership owns 4 of the offices, which have a property value of $450,000. Bill and George have no property interests in the business except as partners, so neither Bill nor George pass the real property test as the property value is less than $500,000.

However, John meets the income requirement and owns the fifth office in his own right. It is valued at $70,000. Adding the value of his property to the value of the property assets held in partnership allows him to pass the real property test and claim a loss ($450,000 + $70,000 = $520,000).

Other assets test

If you are a member of a partnership and all the other partners are individuals, the value of the other assets of the whole partnership must be at least $100,000 before the individual members can deduct losses.

If partners of the partnership are companies or trusts, you must exclude the value of any other assets attributable to them.

You must also exclude the value of any other assets that are owned by individual partners in their own right. However, you can include the value of any other assets you own outside the partnership that are used in the business activity on a continuing basis.

Example: partnerships and the other assets test

Marika and Bill meet the income requirement. They are in partnership with Steelco Pty Ltd. They are equal partners in a manufacturing enterprise that has plant, equipment and trading stock valued at $210,000.

Steelco owns $70,000 of these assets and as Steelco is a company, this amount must be ignored for the purposes of the other assets test.

However, as the balance is still above $100,000 ($210,000 − $70,000 = $140,000) both Marika and Bill are entitled to deduct losses.

Find out about

- How to offset your losses
- How to defer your losses

QC 45040

Commissioner's discretion

When and how to apply for a Commissioner's discretion to offset a business loss against income from other sources.

Last updated 7 April 2025

If you're an individual in business, as either a sole trader or in partnership, and your business makes a loss, you may be able to offset the loss against your other income such as salary and wages.

To be eligible, you must meet the income requirement and pass one of the four tests.

If you are not eligible, you can apply for a Commissioner's discretion.

For more information, see:

- TR 2007/6 *Income tax: non-commercial business losses – Commissioner's discretion*
- TR 2001/14 *Income tax: Division 35 – non-commercial business losses*
- TR 2001/14A – Addendum *Income tax: Division 35 – non-commercial business losses*
- TR 2001/14A2 – Addendum *Income tax: Division 35 – non-commercial business losses*

Applying

When to apply for a Commissioner's discretion for non-commercial losses.

Special circumstances

Understand when you can apply for the Commissioner's discretion to allow you to claim your non-commercial loss.

Lead time

When you may apply for the Commissioner's discretion on a non-commercial loss based on a lead time.

If you disagree with the Commissioner's decision

How to request a review if you disagree with the Commissioner's decision.

QC 16248

Applying

When to apply for a Commissioner's discretion for non-commercial losses.

Last updated 7 April 2025

When to apply

You can apply for a Commissioner's discretion if you either:

- have special circumstances outside your control
- meet the income requirement and the nature of the business activity means you will not pass a test, however, you expect your business activity will meet one of the tests or make a tax profit within the commercially viable period for your industry
- do not meet the income requirement, because of the nature of the business activity for the most recent income year where your business activity has not made or will not make a tax profit and there is an objective expectation your business activity will make a tax profit within the commercially viable period for your industry.

If you are applying for the discretion on the grounds of:

- special circumstances, you should apply as soon as possible after those circumstances have occurred. However, we will accept applications within the normal amendment period for that income year.

- lead time, you should apply for the first year you have excess deductions you wish to offset against other income.

To ensure you have provided all the necessary information for us to consider your application for the Commissioner's discretion, you must complete and answer all questions in the application.

If you later realise you could have applied for the Commissioner's discretion, you may do so. If it is granted you can request an amendment of the relevant income tax assessment within the normal amendment period.

How to apply

You must apply for the discretion using Private ruling form (non-commercial losses).

Provide all relevant information, including evidence from independent sources (where available), that objectively establishes that you meet the conditions for the Commissioner's discretion.

You will also need to complete the Non-commercial losses: evidentiary checklist as part of your application.

We will notify you of the decision in writing.

Duration

The duration of a Commissioner's discretion will be decided on a case-by-case basis. The Commissioner may decide that the discretion can apply to future years as well, but it depends on the particular circumstances of each request.

When determining the length of the discretion, we consider factors such as special circumstances, the nature of the business and lead times.

QC 81687

Special circumstances

Understand when you can apply for the Commissioner's discretion to allow you to claim your non-commercial loss.

Last updated 7 April 2025

If your business activity has been affected by special circumstances outside your control, you can apply for the exercise of the Commissioner's discretion to allow you to claim your loss in that income year if those special circumstances have prevented you passing one of the four tests or from making a tax profit.

What are special circumstances

Special circumstances are sufficiently different to the circumstances that occur in the normal course of conducting a business activity.

Special circumstances include natural disasters such as drought, flood, bushfire, cyclones, hailstorms and tsunamis.

Other events that may be included as special circumstances, depending on the facts, are:

- oil spills
- chemical spray drifts
- explosions
- disturbances to energy supplies
- government restrictions
- illnesses affecting key personnel.

For the other events, you must show that the special circumstances were outside your control.

Income requirement met

If you meet the income requirement, there are 2 main factors we consider to decide if it is appropriate for the exercise of the discretion for an income year:

- your business activity is affected by special circumstances such that it is unable to satisfy any of the tests
- the special circumstances affecting your business activity are outside your control.

Example 1: income requirements met

Mark operates a clothing store specialising in the sale and hire of costumes. During the 2015–16 income year, a fire destroyed all of his stock. Mark's business was insured, but due to the specialised nature of the apparel he was unable to resume normal operations for three months. As a result, Mark's business activity had assessable income of less than $20,000 and resulted in a loss that he wants to offset against his other income.

Mark's other income for the 2015–16 income year was $35,000, and Mark met the income requirement for that income year. However, Mark's business activity did not satisfy any of the tests set out in Division 35 of the *Income Tax Assessment Act 1997* (ITAA 1997) in the 2015–16 income year. To claim a deduction for the loss, he needed to ask the Commissioner to exercise discretion for that income year.

Mark is able to show that his business activity satisfied the assessable income test in the 2014–15 year and his trading before the fire indicated that he was likely to satisfy this test in the 2015–16 year, if it were not for the fire.

The Commissioner accepts that the business activity would have satisfied the assessable income test if the fire had not occurred. The Commissioner will exercise discretion for the 2015–16 income year as the fire is considered to be a special circumstance outside Mark's control. Mark will be able to offset the loss from his business activity against his other income.

If your business activity would not have satisfied a test even if the special circumstances had not occurred, it is unlikely that the Commissioner would exercise the discretion, and so you would defer your losses.

Income requirement not met

For most individuals who do not satisfy the income requirement it is expected that the business activity will meet one of the four objective tests.

Access to the special circumstances discretion is not limited to those individuals who satisfy the income requirement. Individuals who do not meet the income requirement, but can demonstrate their business is commercial and has been affected by special circumstances, may also apply for the Commissioner's discretion to allow the losses to be claimed in that income year.

For a business activity to be regarded as commercial, at least one of the four objective tests provided in the non-commercial loss rules must be satisfied. If you do not satisfy the income requirement, the factors you must satisfy in deciding whether to apply for the Commissioner's discretion for an income year are all of the following:

- your business activity is affected by special circumstances such that it is unable to produce a tax profit

- your business activity either satisfies at least one of the tests, or is affected by special circumstances such that it is unable to satisfy any of the tests
- the special circumstances affecting your business activity are outside your control.

Example 2: income requirements not met

Alister carries on a business of breeding cattle for sale, and has done so for the past 20 years. In prior years this business activity has been very profitable. However, in the 2015–16 income year it was affected by drought, which caused Alister to spend much more than anticipated on fertilizer and seed to maintain the condition of his pastures. The drought also affected the average sale price per head Alister could obtain for his cattle. A large loss was made from the business for the 2015–16 income year.

Alister has other income of $300,000, so he did not meet the income requirement for the 2015–16 income year. Alister's business activity satisfied both the assessable income and profits test for this year. For Alister to claim a deduction for the loss, he needs to ask the Commissioner to exercise his discretion for that income year.

Alister's application shows that special circumstances outside his control – the drought – caused his business activity to make the loss; without those circumstances, a profit would have been made.

The Commissioner accepts the business activity is 'commercial' based on the strong past profitable performance and the fact that the business continues to satisfy the assessable income test and the profits test. The Commissioner concludes that it is unreasonable in these circumstances for the loss to be deferred, and uses the special circumstances discretion. Alister will be able to offset the loss from his business activity against his other income.

If your business activity would have made a loss even if it had not been affected by special circumstances, it is unlikely that it would be considered unreasonable for the loss deferral rules to apply and the Commissioner is unlikely to exercise the discretion.

Example 3: not special circumstances

Using Alister's case in Example 2, if his business had not made a profit in recent times and was not reasonably expected to make a profit in the future, the Commissioner would not exercise the special circumstance discretion. Even though Alister's business satisfied the real property test or the other assets test and was affected by drought, it was not because of the drought that Alister would not make a profit. This means it would not in itself, indicate that it was unreasonable for losses from the business to be deferred.

The discretion can be exercised in income years after the one in which the special circumstances occurred if the effects of those special circumstances continue to prevent your business activity from satisfying any of the tests in those later income years. However, there may be situations where the special circumstances, because of their continued existence, become the ordinary or usual situation. It would not be appropriate to exercise the discretion once this occurs.

Tax profit

A tax profit is where the amount of assessable income from the activity for a year is greater than the sum of the deductions attributable to the business activity for that year.

Outside your control

The special circumstances affecting your business activity must be outside your control.

If you fail for no adequate reason to adopt certain practices commonly used in your industry to prevent or reduce the effects of certain circumstances, such as pests or diseases, this may point to the circumstances not being outside your control.

Similarly, if you acquired a poorly run but promising business activity, it would generally be considered within your control and would not, by itself, constitute special circumstances, even though the actions of the former operator may have been outside your control.

Economic or other market fluctuations that might reasonably be expected to affect a business activity are not unusual or out of the ordinary and, therefore, are not considered to be special circumstances. These fluctuations are expected to occur on a regular or recurrent basis when carrying on a business activity and affect all businesses within a particular industry. However, substantial, unexpected economic or market fluctuations of a scale not regularly encountered previously may qualify on a case-by-case basis.

Example 4: normal business fluctuation

Oliver has a farming business which produced assessable income of $25,000 from the sale of produce in the 2014–15 income year and satisfied the assessable income test. In the 2015–16 income year the market price of his produce dropped because of lower consumer demand; Oliver's farm income fell to $18,000 and a loss resulted. The fall in market price was within the range of normal fluctuations for this industry. Oliver's business activity did not satisfy any of the tests and the exception for primary production business activities did not apply, as he received at least $40,000 of non-farm income.

In this case, the Commissioner would not exercise the discretion for special circumstances as the reduction in market prices for produce from Oliver's farm is not a special circumstance but a normal business fluctuation. As a result, the loss from Oliver's farming business activity will be deferred.

Evidence

Evidence to support your application for the Commissioner's discretion due to special circumstances can include:

- evidence of the event (circumstances)
- why the effect of the event is regarded as special in relation to the ordinary operations of your business activity
- whether, and on what basis, the event can be regarded as unusual or out of the ordinary
- the basis on which your activity would have passed a test or made a tax profit but for the event occurring - that is, what happened differently as a result of the event occurring
- whether the event was the main or only reason for your business activity failing a test or not making a tax profit
- how the event, including the effects of the event on your business activity, was outside your control
- whether your business activity has passed a test or made a tax profit in a previous year
- whether you expect the event to affect your business activity in the future, and if so, to what extent
- any other information or evidence you think should be taken into account in your application.

QC 81688

Lead time

When you may apply for the Commissioner's discretion on a non-commercial loss based on a lead time.

Last updated 7 April 2025

Where you can demonstrate that your business activity is commercially viable but, because of its nature, there is a lead time between the commencement of the activity and the production of any assessable income, you may apply for the exercise of the Commissioner's discretion.

If you meet the income requirement

The Commissioner must be satisfied that both:

- the activity, because of its nature, has not satisfied, or will not satisfy, any of the four tests
- there is an objective expectation, based on independent evidence (where available) that, within a period that is commercially viable for the industry, the business activity will either
  - satisfy one of the four tests
  - make a tax profit.

Example 5: meeting the income requirement

Tamsin acquired a still in September 2015, and the appropriate licences and authorisations to produce and distribute an alcoholic spirit. She commenced production of the base spirit in October 2015. Legislation states that the spirit must be aged in oak casks for at least 2 years before it can be bottled and sold.

Tamsin developed a business plan based on advice from her accountant and information from alcohol distributors. Tamsin's business plan indicates that she will be able to commence sales of her product in the 2017–18 income year. Tamsin will have losses from her activity that she wishes to deduct against her $50,000 salary and wage income for the 2015–16 and 2016–17 income years. Her activity will be profitable in the 2017–18 income year.

As Tamsin's alcoholic beverage production and distribution activity is carried on as a business in the 2015–16 and 2016–17 income years, she will need to ask for the Commissioner to exercise discretion for these income years. Tamsin is able to present independent evidence that making a profit in the third year of operation is within the period that is commercially viable for the industry.

The Commissioner accepts that it is in the nature of the business activity that there will be a lead time before a profit can be expected or one of the tests satisfied. The Commissioner would exercise discretion in such a case for each of the 2015–16 and 2016–17 income years inclusive. Any losses made in these years would not be deferred.

If you do not meet the income requirement

The Commissioner must be satisfied that both:

- the activity, because of its nature, will not make a tax profit
- there is an objective expectation, based on independent evidence (where available) that, within a period that is commercially viable for the industry, the business activity will make a tax profit.

Example 6: not meeting the income requirement

In the 2015–16 income year, Jack has a taxable income of $200,000, reportable super contributions of $50,000, and reportable fringe benefits of $20,000. Jack also owns a vineyard that he purchased in August–2013. The vineyard is valued at $750,000 and has excess deductions of $50,000 in 2015–16.

Jack does not meet the income requirement because the sum of his taxable income, reportable fringe benefits, and reportable super contributions is $270,000. The vineyard has not made a profit in the previous income years. Despite the fact that his business activity is being carried on with real assets worth more than $500,000, he must now apply to the Commissioner if he wants to apply his losses against his other income.

Jack has obtained an independent assessment that the vineyard will make a tax profit (assessable income greater than deductions) within 7 years from when he started the business activity. The independent advice also includes evidence that the commercially viable period for the industry is at least 7 years. Jack applies to the Commissioner to exercise the discretion.

The Commissioner decides that:

- there is an objective expectation, based on the independent assessment and evidence, that the vineyard will produce assessable income greater than available deductions in a given year within a period that is considered commercially viable for the industry concerned

- Jack can apply the $50,000 against his other assessable income in the 2015–16 income year.

Nature of the business

Irrespective of whether you meet the income requirement, you must provide objective evidence (where available) that the reason your activity has not yet met one of the four tests or produced assessable income greater than available deductions (tax profit) is because of the nature of the business, and not for some other reason that is peculiar to your particular business activity.

The phrase 'because of the nature of the business' refers to inherent characteristics of the type of business activity being conducted by you, which are common to any business activity of that type. These inherent characteristics must be the reason why your activity is unable to satisfy any of the tests or make a tax profit from the period your business activity first commences to the end of the last income year in which that characteristic still affects the activity's ability to satisfy a test or produce a tax profit (an initial period). This initial period has to be within the commercially viable period for the industry.

A determination does not need to be made as to how long it will take your business activity to become commercially viable. Rather, it involves an enquiry into whether your business activity will satisfy a test or make a tax profit within a time frame in which other commercial businesses in the same industry would make a profit.

The period that is commercially viable will vary from industry to industry, according to factors such as anticipated income, expenses and seasonal variations.

Examples of such activities include forestry, viticulture and other horticultural activities.

The discretion is not available in cases where the failure to make a profit is for reasons other than the nature of the business activity, such as:

- starting out on a small scale
- building up a client base
- business choices made by you that are not consistent with the ordinary or accepted practice in the industry concerned (such as hours of operation, location, climate or soil conditions, or the level of debt funding).

Example 7: nature of the business

Phillipa started a red fruit growing business in the 2012–13 income year. However, Phillipa planted a very small number of red fruit bushes, despite the recommendation from the industry body, Red Fruit Growers United, that significantly more bushes should be planted for a commercial activity. Phillipa planned to retire in about 15 years and gradually increased the size of the orchard over the 10 years before her retirement. Phillipa installed an irrigation system as recommended by the industry body, which cost $150,000.

In the 2015–16 income year, Phillipa has a taxable income of $220,000, and reportable super contributions of $35,000. She does not meet the income requirement because the sum of her taxable income and reportable super contributions is $255,000.

Phillipa's business made losses in the 2013, 2014 and 2015 income years. The exception for the primary production business activities did not apply, as she had received more than $40,000 of non-farm income in each year. Even though Phillipa carried on the business activity with other assets valued at more than $100,000, she must apply to the Commissioner if she wants to apply her losses in the 2010 and future income years against her other income.

Evidence from the industry body shows that any red fruit growing business would not be expected to make a tax profit before year 5 as there are inherent characteristics that prevent it from doing so until around the time of full yield.

Even though there are inherent characteristics in Phillipa's business activity that prevent her from making a tax profit in the 2016 year, there needs to be an objective expectation, based on evidence from independent sources, that within the commercially viable period Phillipa will make a tax profit. Only then can the Commissioner's discretion to be exercised.

Phillipa developed a business plan for her business activity based on the material she had from the industry body. As Phillipa had planted such a small number of bushes it was not likely that the business activity would make a tax profit until she retired in 15 years and increased the number of red fruit bushes to a commercial number.

The evidence from industry experts shows that a red fruit growing business, conducted in a commercially viable manner, should be able to make a tax profit by the fifth year.

As there is no objective expectation that Phillipa's business activity will make a tax profit within a period that is commercially viable for the industry concerned, the:

- Commissioner's discretion would not be exercised
- losses from Phillipa's business activity would be deferred.

Example 8: choices made in running the business

Andrew started a clock-repair business in the 2014–15 income year. He was new to the region and had yet to establish his clientele. Andrew had intended to operate his business full time, but as his funding was very limited he chose to continue his part-time employment to support himself and only worked on his business activity in his spare time.

Andrew's premises are in the back of a small arcade and he only opens for business on weekends, while the other shops in the arcade are open every day of the week. The arcade is not in an area that attracts business on weekends. Andrew cannot afford advertising and has so few clients that he is unable to cover his expenses. Andrew has made losses each year.

Andrew has a taxable income of $90,000 in the 2015–16 income year. Therefore, he meets the income requirement.

Andrew's business has yet to satisfy one of the four tests. Other businesses of this type are able to satisfy a test in the first year of operation.

The inability of Andrew's business activity to satisfy any of the four tests or produce a tax profit is due to his personal business choices as to his hours of business, location and advertising – not because of any inherent characteristics that affect clock-repair businesses. Accordingly, the Commissioner would not exercise the discretion.

The inherent characteristics may be present for an initial period from the time your business activity commences. After that initial period has elapsed, which can be several years, the inherent characteristics may cease to be the cause of those business activities being unable to satisfy any of the tests or produce a tax profit.

Objective evidence

For the Commissioner to exercise discretion for lead time, you must be able to demonstrate to the Commissioner that there is an objective expectation your business activity will meet one of the tests or produce a tax profit that is within a **period that is commercially viable for the particular industry in which you conduct** your business. The objective expectation must be based on evidence from appropriate independent sources, where available.

Sources of independent evidence can include an independent professional individual or organisation experienced in the relevant industry, such as:

- industry or regulatory bodies
- tertiary institutions
- industry specialists
- professional or trade associations
- government agencies
- other independent entities with a similar successful business activity
- business advisers
- financiers
- banks.

You must be able to show both the:

- average time for the industry concerned to reach the level of operations required to be commercially viable
- reasonable period of time your business activity will take to pass a test or make a tax profit given your particular circumstances (you must be able to show that this time is within the standard for the industry concerned and consider your business plan, resources available to you and any relevant environmental factors).

Evidence of the commercially viable period for a specific industry may include:

- evidence of what is typically considered to be the commercially viable period for your particular industry. For example, evidence about when any first commercial crop is expected, expected yields, the year the activity is expected to become profitable for the first time (not the year the industry expects the activity to recoup the expenditure to date) and when a typical start-up activity in the industry becomes financially self-sustaining
- evidence such as industry articles, statistics, analyses, and market forecasts that support the proposals or projections made in any business plan
- evidence on the suitability of your business activity to the location where it is undertaken, such as soil and climate conditions, markets

for the products or services, and transport requirements
- scientific research or other papers on relevant industries
- evidence supporting the yield and price forecasts.

Product rulings

If you have invested in an arrangement with a product ruling, and the Commissioner's discretion has been exercised in that product ruling, the discretion applies for the life of the ruling. For more information, see Non-commercial losses and product rulings.

QC 81689

If you disagree with the Commissioner's decision

How to request a review if you disagree with the Commissioner's decision.

Last updated 7 April 2025

The Commissioner's exercise of discretion under the non-commercial losses rules (including a decision not to exercise discretion) is a matter leading up to or forming part of the making of an income tax assessment.

All decisions leading up to or forming part of the making of an income tax assessment are subject to a formal review process, including internal review and review by the Administrative Review Tribunal and Federal Court of Australia. For more information, see Dispute or object to an ATO decision.

QC 81690

How to offset your losses

If you have exempt income, you generally must reduce your losses by that amount.

Last updated 7 April 2025

If you are eligible to offset your loss in the current year, the current year losses, plus the deferred losses from earlier years, can be offset against other income in the current year.

With your business loss, you will need to combine all income and deductions from both foreign and Australian sources that are attributable to the same or similar business activity.

There is no restriction on whether you can claim your loss against foreign or Australian components of your income.

Offset order of losses

You do not have to use non-commercial losses in any particular order. Each deferred loss is included in the calculation of any loss from the business activity for the next year, so the order is not relevant.

Example: offsetting deferred losses

Martin has a full time job but also runs a mobile pie van at various sporting grounds on the weekend. His net figures are below.

Year	Assessable income (1)	Allowable deductions (2)	Net (1) – (2)	Deferred deduction from previous year	Deferr deduc for currer year
1	$10,000	$11,000	($1,000)	$0	$1
2	$14,000	$15,500	($1,500)	$1,000	$2
3	$18,000	$17,000	$1,000	$2,500	$1
4	$20,000	$22,000	($2,000)	$1,500	

In the first year, Martin makes a loss of $1,000 but can't offset this against his other income because he doesn't meet any of the four tests.

In the second year, Martin makes a loss of $1,500. He can't offset this loss because none of the four tests are satisfied. He now has a $2,500 deferred loss to carry forward ($1,500 is added to the $1,000 loss from the first year).

In the third year, Martin makes a profit of $1,000. He can offset $1,000 against the deferred loss. Martin now has a deferred loss of $1,500 ($2,500 less $1,000).

The losses will continue to be deferred until either:

- Martin satisfies one of the four tests and meets the income requirement
- the Commissioner exercises his discretion to allow the loss.

In year four, Martin meets the income requirement as he has assessable income of $20,000. Martin can deduct the $1,500 deferred loss and the $2,000 loss for year 4 against his other income for that year.

Exempt income

If you have exempt income, you generally must reduce any other tax losses and non-commercial losses by that amount.

QC 45038

How to defer your losses

Learn how to defer your business activity loss in the current year because of the non-commercial loss rules.

Last updated 7 April 2025

If you can't deduct your business activity loss in the current year, you can defer your loss for use in a later year.

If your business makes a profit in a following year, you can offset some or all of the deferred loss against this profit, up to the amount of your profit.

You can also claim the deferred loss against other income in a following year if during that year:

- you meet the requirements set out for individuals or sole traders or partnerships
- the Commissioner has exercised the discretion to allow you to claim the loss.

Defer losses indefinitely

There is no time limit on how long you can defer your losses.

Your loss can be deferred indefinitely until one of the following applies:

- There is a profit from your business activity, in which case the deferred loss can be offset to the extent of the profit from the business activity.
- You meet the requirements set out for non-commercial losses.
- The Commissioner exercises his discretion to offset the loss.

Reducing for any net exempt income

If you have other tax losses (excluding non-commercial losses) these must be reduced by any net exempt income you received during the year first. Any net exempt income remaining after this is then used to reduce your non-commercial loss balance.

If you do not have other tax losses then your exempt income is used to reduce your non-commercial losses. The reduced amount is then deferred to a future income year if it cannot be completely offset against other income.

Example: deferred losses

The accounts of Michael's plumbing business show the following amounts for an income year:

- assessable income $15,000
- deductions $20,000.

Michael also has $3,000 in net exempt income from other sources.

His deferred loss is $5,000 ($15,000 – $20,000).

The amount deferred to future years is reduced by the net exempt income amount to $2,000 ($5,000 – $3,000). Therefore, the amount that can be offset in future years against Michael's income from business activities is $2,000.

In every future year, the balance of the deferred loss is further offset by that year's exempt income, where this exempt income has not already been applied against other 'normal' tax losses.

For more information about exempt income, see:

- Taxable, assessable and exempt income
- Tax exempt income from foreign employment
- Amounts you do not include as income

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.