



### **Non-commercial losses: deferral of losses**

There is no time limit on how long these losses can be deferred, until there is:

- ◆ A profit from the activity, in which case the deferred loss can be offset to the extent of the profit from the activity
- ◆ One of the tests is satisfied
- ◆ You are eligible for the Exception, or
- ◆ The Commissioner exercises his discretion.

If your business activity meets any of the last three points, the deferred loss can be offset against income from sources other than your business activity

If you made a loss and satisfied one of the tests this year, you can offset losses from earlier years as well as this year's loss. And you do not have to offset your non-commercial losses in any order.

If your business activity ceases to be carried on, and is never carried on again, and no business activity of a similar kind is ever carried on in a future year, then any entitlement to deduct a deferred loss will be lost.

Source: ATO Fact sheet November 2002

### **Deductible Mortgage Insurance**

A premium for lender's mortgage insurance is deductible when it is incurred by the borrower as a condition of a bank loan being approved where the loan is to be used to purchase an income producing asset.

A once and for all payment for the lender's mortgage insurance was made at the time the loan was taken out so the cost of the insurance is a borrowing cost.

Their reason for the decision is because in the situation where an insurance claim is made, the proceeds are applied to the loan. The insurance does not protect the borrower's capacity to derive income from the asset.

Borrowing costs not exceeding \$100 are fully deductible in the year in which they are incurred. If the total borrowing costs exceed \$100, the deduction is spread over the period of the loan or 5 years - whichever is the shorter period.

Source: ATO ID 2002/1116

### **Refunding imputation credits**

The refund applies where a taxpayer's total imputation credits attached to franked dividends paid on or after 1 July 2000 exceed that taxpayer's

basic income tax liability for the income year. Franked dividends are payments made out of profits by an Australian resident company to its shareholders that carry 'imputation credits'. The amount refunded reflects the amount of any imputation credits, after applying the imputation credits and any other tax offsets to which the taxpayer is entitled to reduce their basic income tax liability to nil.

Previously, imputation credits could only be used to offset a taxpayer's basic income tax liability. Any excess imputation credits were disregarded and could not be refunded.

Who is eligible for the refund? Subject to the anti-avoidance rules, the taxpayers eligible for a refund of excess imputation credits are resident:

- ◆ Individuals who receive franked dividends, either directly or through a trust or partnership;
- ◆ Trustees liable to be assessed under section 99 (but not sections 98 or 99A) of the Income Tax Assessment Act 1936 (ITAA 1936);
- ◆ Complying superannuation funds;
- ◆ Complying approved deposit funds (ADFs);
- ◆ Life insurance companies and registered organisations (in respect of their superannuation business);

- ◆ Pooled superannuation trusts (PSTs); and
- ◆ Endorsed income tax exempt charities and deductible gift recipients.

The refund applies to imputation credits attached to franked dividends paid on or after 1 July 2000. Prior to 1 July 2000, the tax offset could not create a refund. If taxpayers had any excess imputation credits available after their tax liability had been reduced to nil, the imputation credits were disregarded and could not be refunded. However, for dividends paid on or after 1 July 2000 excess imputation credits will be refunded to eligible resident individuals and certain other entities.

Taxpayers are not eligible for the tax offset or a refund of any excess imputation credits if certain anti-avoidance rules are triggered. The anti-avoidance rules include, among other things, the holding period rule and the related payments rule.

The holding period rule requires the taxpayer to hold the shares 'at risk' for at least 45 days (90 days for preference shares) during a defined qualification period (the 'primary' qualification period) to be eligible for a tax offset in relation to the imputation credit. The holding period rule only needs to be satisfied once for each purchase of shares.

The related payments rule applies to a taxpayer if the taxpayer makes, or is under an obligation to make, a 'related payment'. A related payment is a payment that passes on the benefit of the franked dividend to someone else. If the rule applies, and the taxpayer does not hold the shares 'at risk' for

45 days (90 days for preference shares) during a more limited qualification period (the 'secondary' qualification period), the taxpayer is prevented from receiving a tax offset in relation to the imputation credits. The related payments test must be satisfied for each dividend payment.

Source ATO Fact Sheet 15 November 2002

### Quiz: Which are ordinary income?

- 1 Lease fees paid by a taxi driver to the cab owner
- 2 Lotto winnings
- 3 Gold nugget unearthed while gardening, sold for \$20,000
- 4 Gold nugget unearthed while mining, sold for \$20,000
- 5 Waiters' Tips
- 6 An amount given as a 'thank you' for locating a stolen car

### Emergency Deduction

An annual emergency services levy (for fire, etc) imposed by a local council on an income producing building and calculated on the dollar value of the land assessed was allowable as a general deduction.

Source: ATO ID 2002/899

### Damages not deductible

A taxpayer did not continue employment for an agreed period after an employer funded self education expenses. The employer requested a refund from the ex-employee and these 'damages' are not deductible for the employee as the expense was not related to assessable income.

Source: ATO ID 2002/902

Answers to Quiz:

1Yes 2No 3No 4Yes 5Yes 6No

### Mistakes not deductible

A taxpayer entered into a hire purchase financing agreement for a new motor vehicle that was to be used solely for business purposes. A mistake by the lessor finance company resulted in the monthly instalments payable by the taxpayer being less than they should have been. The taxpayer incurred legal expenses in defending an action brought by the lessor finance company. A claim for a deduction for the legal expenses was not allowable on the basis that the expenses were of a capital nature.

Source ATO ID 2002/938

### No CGT relief for performance gain

Where a business is sold for a cash consideration and a right to a further performance related payment, a capital gain that arises from such a further payment cannot qualify for the CGT small business concessions. This is because the right to the performance related payment would not qualify as an active asset for the purposes of those concessions.

Source: ATO ID 2002/766

### Substantiation needed

A taxpayer working from home was rejected on depreciation of computer because he could not show he owned it or the price he paid for it. His high mobile phone costs and estimated electricity amounts were also rejected due to no evidence to support the claim. Only part deduction was permitted for rental accommodation for an area set aside exclusively for work purposes and garage but not a walkway.

Source: ATTA 1157 Nicolls V FC or T