

SUBMISSION 4

LOSSES FROM NON-COMMERCIAL ACTIVITIES

In June 2000, the Government introduced "integrity measures" [Legislation dealing with losses from non commercial activities] which are having serious consequences for some artists.

This Legislation precluded the artist from claiming losses from such business activity, unless he or she met one of four criteria :

- Assessable income had to exceed \$20,000
- A profit had to be made in 3 out of 5 years
- Assets utilized in the business have to exceed \$100,000
- Utilized real estate had to exceed \$500,000

Subsequent amendments to the Legislation enabled artists with income from other sources of less than \$40,000 to offset their art business losses against this other income.

Without a doubt this has been a great assistance to low income earners, however it is a major problem for artists who receive income in excess of \$40,000 and are precluded from deducting the losses from their art related activities.

My understanding of the background for the integrity measures was to stop hobby farmers from rorting the tax system, yet it is likely that many of these taxpayers would be able to meet at least one of the criteria, whereas, there are many struggling artists who are unable to meet any of the four criteria.

For a struggling artist to achieve sales of \$20,000 every year, is extremely difficult, if not impossible and even many established artists are not guaranteed successful sales from each exhibition.

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In 2005 a Ruling was issued by the Taxation Office, after lengthy consultation with a number of arts organisations and individuals [including myself] which set the criteria, to define whether an artist is "carrying on a business as a professional artist."

It seems a travesty of justice, if an artist meets the criteria to determine that he or she is carrying on business a professional artist, that these artists have then to meet the additional criteria mentioned above.

There is no justification in putting additional conditions on artists' ability to claim legitimate business expenses, once they have established that they are carrying on business, as a professional artist.

The limit of \$40,000 of other income, which an artist can earn, was set in 2000 and has not been indexed, despite the fact that the cost of living figures have increased by some 35%.

A large proportion of artists who are affected by these regulations, are artists who, in order to earn additional income, have taken on teaching roles at tertiary educational institutions. Ironically, in order to be appointed to such a position, the applicant must be a "practising artist". However, if he/she earns a salary of more than \$40,000 they must meet the above-mentioned criteria, or their losses from art are quarantined.

The current economic situation can only add to the difficulties that artists experience in their desire to eke out a living from their profession.

This Legislation affects those artists who are struggling to make ends meet and who can least afford to forego the tax deduction on the losses from their art related activities.

In fact this Legislation has the effect of penalising artists for their lack of financial successful, which I am sure is not the intention of the Legislators.

It is suggested that the Legislation be amended to exclude artists who are deemed to be "carrying on a business" and in the meantime ensure that the limit of \$40,000 is indexed to the CPI.

We estimate that the cost of implementing the above proposal will be between \$2 – 4 Million.