



NON-COMMERCIAL LOSSES FOR LIFESTYLE BUSINESSES MAY NOT BE OFFSET AGAINST INCOME IF INDUSTRY BENCHMARKS ARE NOT MET

Individuals carrying on loss-making lifestyle businesses activities (eg hobby farms) on the side, need to be aware that there is a potential that these losses may not be offset against income from other sources if they fail to meet the benchmark of average yield time for that industry, said Pitcher Partners partner Greg Nielsen.

Mr Nielsen's comments followed the passing in the Senate today of the *Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009* including amendments to the non-commercial loss rules where individuals with adjusted taxable income of \$250,000 or more will no longer be able to offset losses from non-commercial business activities against income from other sources (eg salaries or profitable businesses) unless the Commissioner exercises his discretion otherwise.

"We are advising clients to watch out because under the new laws the Commissioner will be expected to base the exercise of his discretion on only one factor – the industry norm for profit lead time – which can lead to absurd results."

"Say you establish a primary production business based on sound research and a legitimate business plan. You commit appropriate resources, adopt appropriate management practices and clearly have a long-term objective of profit. However, soil or climate conditions of the property you operate from mean that your lead time before making a profit extends beyond the industry norm. Under the proposed rules the Commissioner is unlikely to let you use your losses," Mr Nielsen said.

He said it is disappointing that the Tax Office is not expected to recognise valid commercial reasons for a long yield time when they depart from the industry norm.

"It is also unfortunate that the law will not adopt a holistic approach and consider a plethora of factors when deciding whether a business activity is commercial – the exercise of the Commissioner's discretion should not be based on a single factor such as profit."

"A benchmark is just that – a benchmark. It cannot possibly provide for the individual circumstances of each business case that may come before the Commissioner."

"Even if the average period for profitability is not met, the Commissioner should still be able to exercise his discretion favourably if the business is carried on in accordance with industry management practices as this should indicate that the activity is commercial," Mr Nielsen said.

Pitcher Partners is an association of independent firms. An independent member of Baker Tilly International.

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