



8 March 2004

Post-implementation review NCL
The Board of Taxation
c/- The Treasury
Langton Crescent
PARKES ACT 2600

372 Elizabeth St Surry Hills
NSW 2010 Australia
Postal Address
PO Box 788

Strawberry Hills NSW 2012
Telephone (02) 9215 9000
Toll-free (1800) 226 912
Fax (02) 9215 9111

Board of Taxation Review of the Non-Commercial Loss Provisions

Dear Mr Warburton

The Australia Council welcomes the opportunity to make a submission to the Board of Taxation's post-implementation review of the non-commercial loss provisions of the *Income Tax Assessment Act 1997* and to comment on the needs of the arts sector.

The enclosed submission was prepared after intensive consultation with arts sector organisations. The submission includes a list of those peak arts bodies that wish to express their support for, and agreement with, the concerns raised by the Australia Council.

Our submission outlines the impact of the current non-commercial loss provisions on artists conducting professional arts businesses. It shows that the provisions disadvantage artists earning over \$40,000 in income from sources other than their arts business, as the majority of these artists will be unable to offset losses from their arts business against their other income. These arts businesses are prevented from claiming their losses because a professional arts business is inherently unlikely to satisfy the 'commerciality' tests set out in the legislation.

The Australia Council understands that the policy intent of the non-commercial loss provisions was to prevent hobbyists from constructing losses of a private or lifestyle nature as business-related and, therefore, deductible. The intent of the provisions was not to preclude legitimate businesses from offsetting their losses against their other income. Nonetheless, the effect of the provisions is to prevent some professional artists from claiming businesses losses even though these artists are not hobbyists but conduct legitimate arts businesses that aim to be commercially viable. This is an unintended consequence of the legislation.

The Australia Council submits that the commerciality tests do not take into account the actual circumstances of individual artists and the commercial practices of the arts industry generally. They are more suited to the scale and turnover of commercial businesses, with the result that the arts sector is treated inequitably in comparison with enterprises in other industries. To redress this inequity, we submit that arts businesses require rules specially tailored to the circumstances of professional artists.

Our submission recommends that all professional arts businesses must be exempted from the operation of Division 35 of the *Income Tax Assessment Act 1997* and that this exemption must operate in conjunction with a public ruling that specifically considers the issue of when an artist is 'carrying on a business as a professional artist'. We believe that this is the best way to achieve substantive equality between arts businesses and other businesses.

If our recommendation is not acceptable to the Board of Taxation, the Australia Council and other key arts industry spokespeople would appreciate the opportunity to consult with the Board. This would enable us to canvas further options for dealing with the specific needs of the arts sector.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jennifer Bott', with a stylized flourish at the end.

Jennifer Bott
Chief Executive Officer