

**SUBMISSION TO THE BOARD OF TAXATION
FOR THE POST-IMPLEMENTATION REVIEW OF NON-COMMERCIAL LOSSES
BY THE ARTS LAW CENTRE OF QUEENSLAND INC**

Background

The Arts Law Centre of Queensland Inc (ALCQ) is a not-for-profit community legal centre incorporated in Queensland in 1991 to provide legal and accounting advice, primarily for self-employed artists, on the key legal and accounting issues in professional arts practice.

The ALCQ membership currently exceeds 4,000 individual Queensland artists including members of the following affiliate member organisations:

- Ausdance Queensland Inc
- Craft Queensland
- Queensland Artworkers Alliance Inc
- Queensland Community Arts Network Inc
- Queensland Music Network Inc
- Queensland Writers' Centre Inc
- Youth Arts Queensland Inc

The association recognises that individual artists are major contributors to the Australian culture and economy and yet are amongst the lowest income earners in Australia. A report published by the Allen Consulting Group in 2001 documents that the contribution in gross industry product to the nation's GDP made by Australian creators through musical composition, the literary arts, and visual arts such as painting, drawing, sculpture in 1999–2000 was \$486 million. In the same period, creative industry producers contributed \$577 million through film and video production, \$444 million through recorded media manufacturing and sound recording studios, \$425 through book publishing, and \$266 million through music and theatre production including concerts, opera, ballet and drama¹. However, unlike cultural industry production, which is primarily undertaken by companies and their employees, creators are primarily self-employed and commonly work as either sole traders or in partnerships.

ALCQ makes this submission in pursuit of the objects of the association so as to advocate for the adaptation of income tax measures that help strengthen the economic status of artists. The submission takes into account the Government's policy intent in relation to Integrity Measures having regard to:

- Unintended Consequences
- Actual Taxpayer Circumstances and Commercial Practices.

The association is not sufficiently resourced to have undertaken empirical research to support the recommendations made in relation to this review, however, this submission cites four publications, published between 1994 and 2002, which document empirical data in relation to the economic status of the artist.

¹ 'The Economic Contribution of Australia's Copyright Industries', The Allen Consulting Group, 2001

Unintended Consequences

The purpose of tightening the extent to which individuals can offset losses from non-commercial activities against other income was intended to prevent significant revenue leakage from unprofitable activities carried out by individual taxpayers claiming deductions for business activities that have business like characteristics but are often unlikely ever to make a profit and do not have any particular commercial purpose.

While this integrity measure was intended to contribute to the fairness and equity of the tax law, it creates significant negative consequences in circumstances where the individual taxpayer is an artist because, for a majority of practitioners, working as an artist will not in its own right provide a wage.

In an economic study of Australian artists published by the Australia Council in 1994, David Throsby and Beverley Thompson from the School of Economic and Financial Studies at Macquarie University report that about 57% of artists spend all their working time on arts-related work, but only 11% spend all their working time at their primary creative activity. The majority of artists are unable to work full time at creative work in their chosen profession and have to derive some other arts-related and non-arts income in order to earn a living wage².

Categorising these taxpayers as carrying on ‘*so-called* business activities’ and ‘hobbies and/or lifestyle choices’ is, arguably, discriminatory rather than fair or equitable.

Actual Taxpayer Circumstances and Commercial Practices

The New Business Tax System (Integrity Measures) Bill 2000 requires that individual taxpayers carrying on a business activity either alone or in partnership may only claim a loss from that activity against their other income in an income year if they satisfy one of five tests in that year.

In his second reading speech in the House of Representatives, Treasurer Costello stated that ‘the measure does not apply where their non-primary production assessable income (excluding net capital gains) is less than \$40,000. This assists those small primary producers who find it necessary to support themselves through moderate amounts of off-farm income (particularly during periods of hardship) while genuinely, at the same time, seeking to pursue their farm activities on a commercial basis’. Also, where special circumstances can be demonstrated that would warrant the recognition of — or make it unreasonable not to recognise — losses in the year they arose, the Commissioner of Taxation has authority to recognise the losses in that year. An example of where this authority might be exercised is where the activity is affected by circumstances outside the control of the taxpayer — such as prolonged drought, flood, bushfire or other natural disasters.

These provisions bear no relevance to the nature of artistic output whereby, for example, ‘many artists produce work that they see as part of their development as a creative artist without it necessarily being appropriate for putting before an audience’³. The impact of the ATO’s interpretation of the legislation is proving extremely problematic for those artists earning more than \$40,000 from other sources.

There is a case, therefore, for the removal of the restrictions on visual arts and craft practitioners offsetting losses from their legitimate arts businesses against other income, on the grounds that they are having negative, unintended effects on the sector. Further that the removal of the \$40,000 limit on other income would reduce any artificial disincentive that currently exists for artists to work in their non-arts employment, and would simplify the taxation arrangements as they apply to artists⁴.

² Throsby D & Thompson B ‘But What Do You Do For a Living’, Australia Council, 1994.

³ Throsby D & Thompson B ‘The Artist at Work’, Australia Council, 1995.

⁴ ‘Report of the Inquiry into the Contemporary Visual Arts and Crafts Sector’, Commonwealth of Australia, 2002

Recommendations

In relation to Integrity Measures, the association recommends that:

- The New Business Tax System be amended so that the artist would no longer be subject to the criterion of reasonable expectation of profit
- That the \$40,000 limit on income from non-arts sources be removed

Further, the association recommends that:

- The artist should be allowed to deduct all expenses, costs and losses incurred in art production from any income sources (including legitimate expenses incurred to maintain the currency of professional skills)
- A level of non-taxable income be established below which the artist would not be taxed for the purpose of income tax assessment
- The artist's status (employee and/or self-employed) be recognised and applied within Australian taxation law, based on artists' needs
- The formation of a standing committee to solve all the problems arising from interpretation of the New Business Tax System as it affects artists

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