

Public Taxation Ruling: carrying on business as a professional artist (TR 2005/1).

For the full Ruling go to the ATO website

<http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR20051/NAT/ATO/00001>

What is the new tax Ruling?

Early in January 2005 the Australian Tax Office (ATO) issued the Public Taxation Ruling: carrying on business as a professional artist (TR 2005/1). This Ruling provides clearer income tax entitlement guidelines, as to who can be regarded as a professional artist rather than a hobbyist in order to claim their art business expenses against all forms of income, whether from their art practice or any other income source.

The Ruling is based on standard industry practices not only for visual artists and craft practitioners but all Australian creators including performers, writers, composers and choreographers. After very prolonged negotiation, the ATO now recognizes that although most professional artists have the intention to make a profit from their art practice, often this success is slow to come or erratic over the course of their careers. Consequently artists usually have to undertake other work in order to survive.

For artists and their tax accountants it is important to understand the conditions contained in this Ruling in order to be able to act appropriately.

Professional arts business

The Ruling applies to people who conduct a “professional arts business” as either:

- a) an author of a literary, dramatic, musical or artistic work
- b) a performing artist or
- c) a production assistant

For visual artists, “author” of an artistic work can mean the artist, sculptor or photographer who created the work.

The Ruling recognizes that because of the nature of art activity, art businesses typically have different characteristics to those found in other businesses ie:

- artists may be motivated by creative purposes and the desire to influence public opinion

- artwork is often not produced with a pre-existing market in mind.

However, an art business must be distinguishable from a hobby or recreational activity.

Art Business Indicators

Of the following list, no single indicator is determinative, but assessment will be made on the overall impression gained after looking at the activities as a whole and the intention of the artist.

The assessment criteria in the Ruling cover a breadth of indicators including whether the artist is or has been:

- seeking to build a reputation as a professional artist
- making attempts to bring his/her work to the public or relevant market
- offering work for sale, or selling art work
- offering expert services through commission or consultancy
- carrying out the work in a businesslike manner (eg keeping financial records, having formal written contracts or agreements, written business plan)
- renting or owning space dedicated for art purpose
- building industry contacts
- eligible to apply for government grants
- seeking philanthropic patronage or sponsorship
- selected for public exhibition, awards, prizes,
- has secured residencies or other professional engagements,
- had work acquired for public or private collections
- has secured work or consultancies on the basis of their professional expertise
- undertaken research into the proposed art business and/or consulting art or business experts prior to or during the activity (eg agent, manager, legal or financial adviser)
- is a member of a professional association or union (like NAVA)

The ATO will also look for:

- whether the artist is trying to make a profit
- repetition and regularity of work as an artist
- whether the activities are of the same kind and carried on in the manner characteristic of this industry
- appropriate qualifications (or equivalent experience)
- peer recognition (eg opinion as an artist sought in public conferences/seminars, artwork used as an example for teaching purposes)
- public recognition (eg work represented in public collections, coverage in the media)
- whether the artist was appointed to a position contingent on his or her status as an artist

Acknowledgements

Throughout the eight years of negotiation, **NAVA** worked with a dedicated pro bono legal team of tax experts, **Judy Sullivan**, Senior Associate (and later also **Jill Savage**), from Mallesons Stephen Jaques and arts lawyer **Delia Browne**, (who first became involved when she was director of the Arts Law Centre of Australia, but continued pro bono after she left to take on other responsibilities).

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Recommendation 2 in the report of the Federal Government's Myer Inquiry into the Contemporary Visual Arts and Craft Sector, provided invaluable support. After the news of the public ruling came through, **Rupert Myer** wrote "I hope that in due course (the Ruling) will be recalled as one of several planks which contributed towards a truly sustainable, hugely creative environment for our artists."

During the long campaign, the **whole arts sector** was united in its efforts to secure the Ruling, and joined together at key moments in negotiations.