



The Real Estate Institute of Australia

Submission to The Treasury on the **Business  
Tax Working Group Interim Report on the  
Tax Treatment of Losses**

*Prepared by the Real Estate Institute of Australia  
February 2012*

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## **BUSINESS TAX WORKING GROUP INTERIM REPORT ON THE TAX TREATMENT OF LOSSES**

### **BACKGROUND**

The Treasury is seeking submissions on the Business Tax Working Group's (BTWG) Interim Report on the Tax Treatment of Losses.

REIA represents around 80% of real estate agencies and is an important element of the broader property and construction sector, which makes a significant contribution to Australia's social climate and economic development. The real estate profession employs approximately 77,000 persons and contributes \$300 billion annually in economic activity.

The REIA's members are the State and Territory Real Estate Institutes, through which around 80% of real estate agencies are collectively represented.

Importantly, REIA represents an integral element of the small business sector. According to the ABS statistics, 73% of real estate agency businesses employ fewer than 10 employees (over 50% of this portion employed fewer than 5 employees). Only 0.6% of businesses employ 50 or more persons.

REIA has the commitment of providing and assisting research and well-informed advice to the Federal Government, Opposition, professional members of the real estate sector, media and the public on a range of issues affecting the property market.

The REIA welcomes the opportunity to provide a submission to Treasury on the Interim Report.

### **ISSUES**

The Report notes that the current tax treatment of losses is asymmetric where taxpayers pay tax to the Government on positive taxable income but the Government does not make payments to taxpayers reflecting negative taxable income. Although the Government does not 'cash out' tax losses, in certain circumstances it currently allows tax losses to be carried forward to be deducted against assessable income in future years. Any losses carried forward to be deducted against future assessable income are subject to integrity rules which further restrict the access to losses where there is a substantial change in company

ownership and the type of activity undertaken by the business. These rules can lead to losses being 'trapped' and never able to be used.

The Report further notes that this treatment of losses creates a bias against innovation and risk taking and thus constrains economic growth and structural adjustment.

The Report canvasses four potential reforms to the tax treatment of losses that are designed to increase productivity, while also delivering tax relief.

The REIA is disappointed that the Report dismisses one of these - the provision of immediate loss refundability – as this would “involve a significant cost to revenue”. It is disappointing that having identified the distortion and the negative impacts this has, the Report dismisses the best solution which provides for perfectly symmetrical treatment of profits and losses.

The REIA would have preferred that the BTWG provide advice on the optimal solution and then leave it to the Government to decide whether it or the other (3) sub optimal solutions should be implemented in the context of the usual budgetary considerations. The REIA notes that the level of likely Government revenues over the medium term attributable to the resources sector and the need for structural change means that the opportunity for reforms of this nature will soon be upon us and should not have been dismissed by the BTWG.

*The REIA thus urges the current review to not dismiss making recommendations about the optimal solution - the provision of immediate loss refundability.*

The REIA is further disappointed that the reform options outlined in the paper refer to businesses operating through a company structure. The Paper points out that businesses operating through other structures (such as sole traders, partnerships and trusts) will require further analysis.

Trusts are a common structure used by small business to conduct their normal business operations or for investment purposes or a combination of both. Trusts have become a common structure for small business to house their trading business. Through their asset protection and succession planning advantages trusts are also used as a way of holding assets. There are nearly 700,000 trusts already in existence, many of which are held by small businesses. REIA believes that all business structures, including trusts should have been included in the analysis.

*The REIA thus urges the current review to undertake further analysis to include businesses operating under structures other than as a company.*

The Paper outlines four possible alternatives to tax treatment of losses. They are: introduction of an alternative integrity test; introduction of a time limited form of loss carry back; applying an uplift factor to losses, and; a combination of these. REIA's comments on aspects of these follow.

REIA notes that introducing new integrity measures is most likely to be of greatest benefit to small business. However the analysis is based on a company structure and REIA, as noted above, would like to see the analysis extended to cover other business structures including trusts.

REIA believes that the carry back of losses should not be time limited to one year. If there has to be a limit REIA feels that this should be a minimum of three years.

REIA supports the introduction of an uplift factor.

REIA believes that a combination of the three measures is the best approach, after the provision of immediate loss refundability, as this best approximates the intentions of the proposed reform.

*The REIA thus urges the current review to propose a combination of measures that best approximates the outcomes of immediate loss refundability.*

## **REIA Recommendations**

***The REIA recommends that the Business Tax Working Group:***

- ***Not dismiss making any recommendations about the optimal solution - the provision of immediate loss refundability.***
- ***Undertake further analysis to include businesses operating under structures other than as a company.***
- ***Propose a combination of measures that best approximates the outcomes of immediate loss refundability.***