FACT SHEET

Income tax – Losses – ownership continuity and commonality requirements

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IS 22/07 FS

This fact sheet accompanies the "IS 22/07, Company losses – ownership continuity, sharing and measurement" which considers the rules applying to company losses, including carrying forward losses, sharing losses and the measurement of ownership interests. This fact sheet summarises the key requirements for carrying forward a loss to a later year and for sharing a loss with a profit company.

RELATED DOCUMENTS

For more information on the business continuity rule, see "IS 22/06 Loss carry-forward – continuity of business activities"

Introduction

1. The loss rules allow a **loss company** to:
   - carry forward a loss to a subsequent income year; or
   - share a loss with a **profit company** in a group of companies.

Carrying forward a tax loss

2. To carry forward a loss, one of the following types of continuity must be satisfied:
   - at least 49% continuity in the ownership of the loss company (**ownership continuity**); or
   - continuity of the business activities of the loss company (**business continuity**).[1]
3. Continuity must be tested for each **tax loss component** and must be maintained for the **continuity period** applying to that component. The continuity period is essentially the period from the start of the income year in which the loss arose to the end of the income year in which the loss is used.

Ownership continuity test

4. Ownership continuity is determined by identifying the lowest ownership interest held by each owner during the continuity period. If there is a group of people whose lowest ownership interests for the continuity period total at least 49%, then the continuity requirement is met. This is illustrated in Example 1.

Example 1 - Ownership continuity

Loss Co had a net loss for the 2015 income year of $100,000. It wishes to use this loss to reduce net income that it has for the 2023 income year. Loss Co has always had a standard balance date.

The continuity period for the 2015 net loss, and for the proposed use in the 2023 income year, is the nine-year period:

[1] The business continuity test is discussed in a separate Interpretation Statement. See "IS 22/06 Loss carry-forward – continuity of business activities".

- beginning on 1 April 2014; and
- ending on 31 March 2023.

No market value circumstance occurred during the period, so only voting interests need be considered.

Two shareholding changes occurred over this nine-year period: on 23 November 2018 and 4 October 2020. This is illustrated in the following table:

	Voting interests as at 1/4/2014	Voting interests as at 23/11/2018	Voting interests as at 04/10/2020	Lowest voting interest
Shareholder 1	50%	50%	25%	25%
Shareholder 2	50%	25%	25%	25%
Shareholder 3	0%	25%	50%	0%
Total				50%

Loss Co can carry forward the 2015 income year net loss of $100,000 to the 2023 income year. This is because the total of Shareholder 1 and Shareholder 2's lowest voting interests over the continuity period is 50%, which is more than the required 49% ownership continuity. Shareholder 3's lowest voting interest during the continuity period is 0% as it did not hold any shares at the beginning of the period.

Sharing a loss

5. A loss company can share a loss with a profit company only if:
   - the loss company meets certain residence requirements;
   - notification and payment requirements are met;
   - ownership or business continuity requirements are met for the tax loss; and
   - **commonality requirements are met for the two companies**.

Ownership commonality calculation

6. To share a loss, commonality requirements must be satisfied at all times during the **commonality period** for the loss. The commonality period for a loss is similar to the continuity period.

7. The substantive commonality requirement, applied at a particular time, is summarised below:

   - The commonality requirement considers people who hold ownership interests in both the loss company and the profit company.
   - For a person with an ownership interest in both companies, the commonality requirement considers the lowest interest held by the person in the two companies. For example, if at a particular time a person holds a 10% ownership interest in the loss company and a 15% interest in the profit company, their lowest interest in the two companies at that time is 10%.
   - The commonality requirement requires that there is a person or group of people whose lowest interests (as described above) total at least 66%.

8. This is illustrated in Example 2.

9. If the ownership of the companies changes during the commonality period for a loss, the same exercise will need to be repeated at different times to ensure commonality of ownership is at least 66% at all times during the commonality period.

Example 2 - Ownership commonality

On 31 March 2022, Loss Co and Profit Co were owned by Carolyn, Rhys and Leia in the following proportions:

Owner	Loss Co	Profit Co	Lowest common voting interest
Carolyn	25%	50%	25%
Rhys	25%	25%	25%
Leia	50%	25%	25%
	100%	100%	75%

In the above table, the lowest common voting interest for each person in the two companies is identified in the fourth column. The interest is common in the sense that at least that percentage is held in both companies. These lowest common voting interests are then totalled. The table shows that Carolyn, Rhys and Leia are a group of people who at a point in time (31 March 2022) have 75% commonality of ownership over Loss Co and Profit Co.

About this document

Some of our longer or more complex items are accompanied by fact sheets, which summarise and explain key points.