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Consolidated groups losses schedule instructions 2012

Complete the Consolidated groups losses schedule 2012, as the head company of a consolidated group.

Last updated 30 May 2012

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These instructions will help you complete the Consolidated groups losses schedule 2012 (NAT 7888) (the schedule).

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Completing the consolidated groups losses schedule

When we refer to 'you' or 'your business' in these instructions, we are referring either to you as a business entity (for example, a company) that conducts a business, or to you as the tax agent or public officer responsible for completing the **Consolidated groups losses schedule 2012** (NAT 7888) (the schedule).

This publication is not a guide to income tax law. Contact us or a recognised tax adviser for help if you feel this publication does not fully cover your circumstances.

Publications and services

To find out how to get a publication referred to in these instructions or information about our other services, see More information.

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Introduction

Find out who must complete the consolidated groups losses schedule 2012.

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Who must complete the Consolidated groups losses schedule 2012?

A head company of a consolidated group or multiple entry consolidated (MEC) group must complete the schedule and lodge it with the Company tax return 2012 (NAT 0656), if **any** of the following apply:

- The total of the group's tax losses and net capital losses carried forward to later income years is greater than $100,000.
- The total of its tax losses and net capital losses transferred from joining entities is greater than $100,000.
- The total of its utilised tax losses and net capital losses is greater than $100,000.
- It has an interest in a controlled foreign company (CFC) that has current year losses greater than $100,000.
- It has an interest in a CFC that has deducted or carried forward a loss to later income years greater than $100,000.
- It is a life insurance company and has a total of complying superannuation/first home savers account (FHSA) class tax losses and complying superannuation/FHSA net capital losses carried forward to later income years greater than $100,000.

The examples provided in these instructions are for illustration purposes only and may use lower figures, for simplicity.

A head company may need to complete the schedule for certain aspects of its net capital losses. While some of the information requested in the schedule is also requested in the Capital gains tax (CGT) schedule 2012 (NAT 3423) (CGT schedule), a head company that completes a consolidated groups losses schedule may also need to complete a CGT schedule.

If the head company completes the schedule for any aspect of its losses, it must complete all relevant parts of the schedule - for example, if a head company completes the schedule as a result of having tax losses and net capital losses carried forward to later income years greater than $100,000, it must also provide details of controlled

foreign company (CFC) losses, even if the total of these losses is less than $100,000.

These instructions are based on provisions relating to consolidated groups. Some of those provisions are modified in Division 719 of the *Income Tax Assessment Act 1997* (ITAA 1997) in relation to MEC groups.

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Completing the schedule

Information on completing the schedule.

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Tax file number (TFN)

Write the TFN of the head company.

Name of head company

Print the name of the head company. The name shown must be the same as that shown on the head company's tax return.

Australian business number

Write the Australian business number (ABN), if any, of the head company.

Part A Tax losses and net capital losses consolidated - excludes film losses

1 Tax losses transferred from joining entities (including head company) at consolidation

You only need to complete item **1** if your group consolidated during the 2011-12 income year.

- Do not include net capital losses or film losses at item **1**.
- Do not include tax losses or net capital losses of the complying superannuation/FSHA class in Part A. Show these losses carried forward to later income years in Part D. Show these losses utilised (claimed as a deduction under section 320-141 of the *Income Tax Assessment Act 1997* (ITAA 1997) in *Life insurance companies taxation schedule - consolidated groups*.
- Show net capital losses transferred from joining entities (including head company) at consolidation at item **6**.
- Do not include tax losses if this item was completed in an earlier income year.
- For the definition of a tax loss, see section 995-1 of the ITAA 1997.
- Do not include tax losses transferred after consolidation; include these losses at item **2**.
- Include the foreign loss components of tax losses - see Part E Foreign source losses.

This item requires information on the amount of tax losses (excluding film losses) transferred from joining entities, including the head company, to the head company at the date the consolidated group has been brought into existence; that is, the date specified in the notice of choice given to the Commissioner of Taxation (Commissioner) - see section 703-50 of the ITAA 1997.

Write the relevant amount of tax losses transferred at consolidation at **A**, **B** or **C**, depending on which loss transfer test has been satisfied.

When an entity joins a consolidated group as a subsidiary member part way through the entity's income year, it calculates its taxable income or tax loss for the period up to the time it joins the group. Generally, any unused carry forward tax losses are transferred to the head company if they could have been used by the joining entity, assuming sufficient income, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a period shorter than 12 months - see subsection 707-120(2) of the ITAA 1997.

Whether the tax losses could have been used by the joining entity in the trial year is determined by applying modified versions of the usual tests for deducting tax losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can or cannot be members of a consolidated group, see sections 703-15 and 703-20 of the ITAA 1997.

Continuity of ownership test losses - companies only

Write at **A** those tax losses that were transferred at consolidation because the continuity of ownership and control tests were satisfied for the ownership test period; that is, from the start of the year when the tax loss was incurred until immediately after the joining time - see sections 165-12, 165-15 and 707-120 of the ITAA 1997.

The following conditions apply:

- There must be persons who beneficially owned (between them) shares carrying (between them) the right to exercise more than 50% of the voting power in the company, and rights to receive more than 50% of the company's dividends and more than 50% of the company's capital distributions at all times during the ownership test period - see sections 165-150 to 165-160 of the ITAA 1997.
- Alternatively, it is reasonable to assume that there are persons (none of them companies or trustees) who between them have beneficial interests (directly or indirectly through one or more interposed entities) in shares in the company carrying (between them) a majority of the voting power, and rights to dividend and capital distributions at all times during the ownership test period - see sections 165-150 to 165-160 of the ITAA 1997.
- If the company claims tax losses in an income year ending after 21 September 1999, it must meet the 'same share and interest' requirement, except where the 'saving' rule applies - see section 165-165 and subsection 165-12(7) of the ITAA 1997.

A modified version of the above rules can apply to widely held companies and eligible Division 166 companies - see Division 166 of the ITAA 1997.

Anti-avoidance provisions are found in Subdivisions 175-A and 175-B of the ITAA 1997.

Same business test losses - companies only

Write at **B** those tax losses that were transferred at consolidation where the continuity of ownership and control tests were failed, but the joining company satisfied the same business test.

The following table shows how the same business test applies for companies joining a consolidated group - see subsections 707-120(1) to (3) and subsections 707-125(1) to (3) of the ITAA 1997.

Same business transfer tests for companies

In these circumstances:	Test the joining entity's business at these points:
1 The joining entity made the loss for an income year starting after 30 June 1999	• just before the end of the income year in which the loss was made • the year of the ownership change if that year started before the trial year, and • the trial year.
2 The joining entity made the loss for an income year starting before 1 July 1999	• just before the time of the ownership change, and • the trial year.

For the purposes of the table, the time of the ownership change refers to the time when the joining entity first fails the ownership or control tests or, if the company is unable to point to the actual time the ownership test was failed, the relevant default test time shown in the table in subsection 165-13(2) of the ITAA 1997.

Where a tax loss is transferred as a result of satisfying the same business test, it may only be transferred again if (in addition to satisfying the usual transfer tests) the entity transferring the loss carried on the same business at these times:

- just before the end of the income year in which the loss was previously transferred to it, **and**
- during the trial year.

See subsection 707-135(2) of the ITAA 1997.

Under the same business test, the company must carry on the same business at all the times indicated in the table above; that is, throughout the trial year and year of ownership change (if applicable) and the other relevant time. The test is not satisfied if, at any time, the

company did not carry on the same business as it did at another required time, or it derives assessable income from:

- a business of a kind that it did not carry on before the relevant time, or
- a transaction of a kind that it did not enter into in the course of its business operations before the relevant time.

'Same' means 'identical' and not merely 'similar'. The term 'same business' is to be read as referring to the same business, in the sense of the identical business. However, the term does not mean identical in all respects.

A company may expand or contract its activities without necessarily ceasing to carry on the same business. The organic growth of a business does not necessarily cause the business to fail the same business test, provided the business retains its identity.

However, if through a process of evolution a business changes its essential character, the entity would fail the test. Application of the same business test is a question of fact and is usually determined by a process of weighing up various relevant factors.

For more information, see sections 165-13 and 165-210 of the ITAA 1997; **and also** Taxation Ruling **TR 1999/**9 - *Income tax: the operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132;***and** Taxation Ruling **TR 2007/2** - *Income tax: application of the same business test to consolidated and MEC groups - principally, the interaction between section 165-210 and section 701-1 of the Income Tax Assessment Act 1997*.

Other losses - trusts only

Write at **C** those tax losses that were transferred at consolidation from a trust.

The trust loss legislation in Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936) affects the deductibility of prior year tax losses by trusts.

The measures generally apply from 7.30pm Australian Eastern Standard Time on 9 May 1995. The legislation applies to **two** broad categories of trusts:

- fixed trusts - see section 272-65 of Schedule 2F to the ITAA 1936.

- non-fixed trusts (including discretionary trusts) defined in section 272-70 of Schedule 2F to the ITAA 1936.

Fixed trusts are subject to the 50% stake test, which tests for continuity of interests in the trust during the relevant periods - see Subdivision 269-C of Schedule 2F to the ITAA 1936.

The relevant test period for transfer purposes ends when the trial year ends immediately **after** joining time.

Non-fixed trusts, which are not excepted trusts, are subject to:

- the 50% stake test, if applicable
- the control test (see Subdivision 269-E of Schedule 2F to the ITAA 1936), **and**
- the pattern of distributions test (see Subdivision 269-D of Schedule 2F to the ITAA 1936, if applicable).

See Division 267 of Schedule 2F to the ITAA 1936 in relation to the ownership and control tests that apply to non-fixed trusts.

The control test is applied as though the test period ended immediately **after** the joining time.

Where the pattern of distributions test is applied as a transfer test, the income year in which the trust joins the consolidated group is treated as the recoupment year instead of the trial year - see subsection 707-130(2) of the ITAA 1997.

A distribution made by a trust after the time it joins a consolidated group is not counted in determining if the pattern of distributions test is passed as a transfer test, if the distribution is made from income or capital of the trust that is attributable to a time after the joining time - see subsection 707-130(4) of the ITAA 1997.

For more information, see appendix 8 in the Trust tax return instructions 2012.

Example 1

A consolidated group came into existence on 23 July 2011. During the 2011-12 income year, the following tax losses were transferred to the head company from joining entities that passed the loss transfer tests indicated

Joining entity	Joining time	Tax loss amount $	Transfer test passed	
			Continuity of ownership	Same business
Company A	23/07/2011	1,500		
Company B	23/07/2011	3,200	X	
Company C	03/02/2012	4,600		
Fixed trust X	23/07/2011	1,800		
Non-fixed trust Y	23/07/2011	3,100		

The head company completes item **1** part A on the schedule as follows:

As Company C transferred its continuity of ownership tax losses after consolidation, the amount transferred is written at **D** item **2**.

2 Tax losses transferred from joining entities after consolidation

- Do not include net capital losses or film losses at item **2**.
- Show net capital losses transferred from joining entities after consolidation at item **7**.
- Do not include tax losses transferred at consolidation; include these losses at item **1**.
- Do not include tax losses transferred in an earlier income year.
- For the definition of a tax loss, see section 995-1 of the ITAA 1997.
- Include the foreign loss components of tax losses that were transferred from joining entities during the income year - see Part E

Foreign source losses.

This item requires information on the amount of tax losses (excluding film losses) transferred from joining entities to the head company **after** the date the consolidated group has been brought into existence; that is, the date specified in the notice of choice given to the Commissioner - see section 703-50 of the ITAA 1997.

Write the relevant amount of tax losses transferred during the income year at **D**, **E** or **F** depending on which loss transfer test has been satisfied.

When an entity joins a consolidated group, it calculates its taxable income or tax loss for the period up to the time it joins the group. Generally, any undeducted carry forward tax losses are transferred to the head company if the losses could have been used by the joining entity, assuming it had sufficient income or gains, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a period shorter than 12 months - see subsection 707-120(2) of the ITAA 1997.

Whether the tax losses could have been utilised by the joining entity in the trial year is determined by applying modified versions of the usual tests for deducting tax losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of the ITAA 1997.

Continuity of ownership test losses - companies only

Write at **D** those tax losses that were transferred after consolidation because the continuity of ownership and control tests were satisfied from the start of the year, when the tax loss was incurred, until immediately after the joining time. For more information on the continuity of ownership and control tests, see item 1 Tax losses transferred from joining entities (including head company) at consolidation in part A.

Same business test losses - companies only

Write at **E** those tax losses that were transferred after consolidation because the continuity of ownership and control tests were failed, but the joining company satisfied the same business test. For more information on the same business test, see item 1 Tax losses

transferred from joining entities (including head company) at consolidation in part A.

Other losses - trusts only

Write at **F** those tax losses that were transferred after consolidation by a trust. For more information on the trust loss legislation, see item 1 Tax losses transferred from joining entities (including head company) at consolidation in part A.

Example 2

A consolidated group came into existence on 1 July 2011. During the 2011-12 income year, the following tax losses were transferred to the head company from joining entities that passed the loss transfer tests indicated.

Joining entity	Joining time	Tax loss amount $	Transfer test passed	
			Continuity of ownership	Same business
Company X	01/07/2011	1,800	X	
Company Y	02/07/2011	2,300	X	
Company Z	03/02/2012	7,800		
Fixed trust A	08/06/2012	1,100		
Non-fixed trust B	08/06/2012	4,500		

The head company completes item **2** part A on the schedule as follows:

As Company X's same business tax losses were transferred at consolidation, the amount transferred is written at **B** item **1**.

>3 Tax losses utilised

- Do not include net capital losses or film losses utilised at item **3**.
- Show net capital losses utilised at item **8**.
- For the definition of a tax loss, see section 995-1 of the ITAA 1997.
- Include the foreign loss components of tax losses transferred from joining entities that were utilised during the income year - see Part E Foreign Source Losses.

This item requires information on the amount of tax losses utilised (excluding film losses). A head company utilises a tax loss to the extent it is deducted from an amount of the head company's assessable income and net exempt income.

Subject to certain limitations, corporate tax entities can choose the amount of prior year tax losses they wish to deduct from the excess, if any, of their assessable income over total deductions (other than tax losses) in a later income year. This also means that corporate tax entities can choose not to deduct prior year losses in order to pay sufficient tax to be able to frank their distributions - see Division 36 of the ITAA 1997.

Subject to various rules, an earlier year tax loss is deducted in a later income year (to the extent that it has not already been utilised) as shown by the following formulas:

- If the head company has no net exempt income and has an excess of assessable income over total deductions (other than tax losses), deduct the tax loss from the excess assessable income - see subsection 36-17(2) of the ITAA 1997.
- If the head company has net exempt income and an excess of assessable income over total deductions (other than tax losses), deduct the tax loss from the net exempt income and then deduct any remaining amount of tax loss from the excess assessable income - see subsection 36-17(3) of the ITAA 1997.
- If the head company has net exempt income and an excess of total deductions (other than tax losses) over assessable income, deduct the excess deductions from the net exempt income and then deduct the tax loss from any net exempt income that remains - see subsection 36-17(4) of the ITAA 1997.

A head company's net exempt income is calculated in accordance with section 36-20 of the ITAA 1997.

Special rules apply when utilising the foreign loss component of a tax loss - see Subdivisions 770-A and 770-B of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A).

A head company may be entitled to utilise carry forward tax losses broadly comprising of:

- tax losses generated by the consolidated group (group losses) or
- transferred tax losses that were generated by an entity before it became a member of the group.

Before utilising a group tax loss or a transferred tax loss, a head company is required to pass the continuity of ownership and control tests, or the same business test.

For more information on the conditions applying to the continuity of ownership test, see item 1 Tax losses transferred from joining entities (including head company) at consolidation in part A. For more information on the same business test, see sections 165-13 and 165-210 of the ITAA 1997; and also Taxation Ruling **TR 1999/9**, and Taxation Ruling **TR 2007/2**.

The operation of the continuity of ownership test for transferred losses is modified by Subdivision 707-B of the ITAA 1997. Firstly, the loss year is modified so that it starts from when the loss was transferred to the head company (however, subsection 707-140(2) of the ITAA 1997 provides that the head company is not prevented from utilising the loss for the income year in which the transfer occurs). Secondly, in determining whether a head company can use a loss transferred to it from a company as a result of passing the continuity of ownership and control tests, changes in ownership of a loss company before it joined the consolidated group are recognised - see section 707-210 of the ITAA 1997.

Tax losses generated by a consolidated group (group losses) are effectively utilised before transferred tax losses - see paragraph 707-310(3)(b) of the ITAA 1997.

Concessional tax losses are utilised after group tax losses and are effectively utilised before other transferred tax losses - see subsections 707-350(2) and (4) of the IT(TP)A.

All losses transferred to a head company for the first time, from the entity that actually made them, constitute a bundle of losses. Losses in the bundle will be categorised by the 'sort of loss', such as a tax loss or net capital loss - see section 707-315 of the ITAA 1997.

Available fraction

Work out an available fraction for each loss bundle. The available fraction limits the annual rate at which the bundle's losses may be recouped by the head company.

A foreign loss component is not subject to the available fraction method of utilisation while it is also subject to the deduction limit in section 770-30 of the IT(TP)A. This means that the available fraction does not apply to the foreign loss component of a tax loss in the first 4 years after commencement. Instead, the deduction limit in section 770-30 applies.

Also, the head company applies the available fraction for each bundle to income or gains that have been reduced by deductions for all foreign loss components (both group and transferred) - see section 770-105 of the IT(TP)A.

Where losses are transferred for the first time, the available fraction is calculated as follows:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

The modified market value of a joining entity is the amount that would be the market value of the entity at the joining time if:

- the entity has no losses and the balance of its franking account is nil
- the subsidiary members of the group at the time are separate entities and not divisions or parts of the head company of the group
- the entity's market value did not include an amount attributable (directly or indirectly) to a membership interest in a member of the group (other than the entity) that is a corporate tax entity or an entity that transferred losses to the head company, and

- a trust (other than a corporate tax entity or a trust with losses) contributes to the joining entity's market value only to the extent attributable to fixed entitlements (at the joining time) to income or capital of the trust that is not attributable (directly or indirectly) to membership interests in another member of the group that is a corporate tax entity or a trust with losses.

See section 707-325 of the ITAA 1997.

An increase in the value of the loss entity is excluded from the entity's modified market value if the increase results from either of these events:

- an injection of capital into the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee, or
- a non-arm's length transaction that involved the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee.

The rules apply to events that occur in the four years before the loss entity joins the group - see subsections 707-325(2) and (4) of the ITAA 1997; **and** Taxation Ruling **TR 2004/9 - Income tax: consolidation: what is meant by 'injection of capital' in section 707-325 of the Income Tax Assessment Act 1997?**

The head company's adjusted market value at the initial transfer time is the amount that would be the market value at that time if:

- the head company did not have a loss of any sort for an income year ending before that time, and
- the balance of the head company's franking account was nil at that time.

See subsection 707-320(1) of the ITAA 1997. The value of the head company is worked out on the basis that subsidiary members of the consolidated group are part of the head company.

The Commissioner has a statutory obligation to ensure compliance with the market valuation requirements of the consolidation regime and to form a view as to whether valuations undertaken are accurate. Our online guide, **Market valuation for tax purposes** will help you meet your tax obligations.

The available fraction is adjusted if certain events happen - for example, the consolidated group acquires a new loss entity or the sum of the available fractions in the group would otherwise exceed 1.

See subsection 707-320(2) of the ITAA 1997.

The use of transferred losses is apportioned if their available fraction applied for only part of the income year or when the available fraction changes during the income year - see section 707-335 of the ITAA 1997.

Apply the available fraction using the following **three-step process**:

1. Work out the amount of each category of the group's income or gains, as specified in column 2 of the table in subsection 707-310(3) of the ITAA 1997. This is the group's total income or gains for each category, less relevant deductions including group losses and concessional losses - but not transferred losses, the use of which is limited by their available fraction.
2. Multiply each category amount by the bundle's available fraction. The result is taken to be the head company's only income or gains for that category.
3. On the basis of the step 2 assumption, work out a notional taxable income for each loss bundle.

This process enables the head company to determine the amount of transferred losses of each sort it can use from the loss bundle to determine its actual taxable income.

Tax losses must first be deducted against exempt income. A special rule provides that the head company, in working out its actual taxable income, can offset its transferred tax losses against assessable income, provided they have been first utilised against a fraction of its total exempt income - see section 707-340 of the ITAA 1997.

An example of applying the available fraction using the three-step process is at Example 11.

Group

Write at **G** the amount of group tax losses utilised.

Group tax losses are those tax losses that have been generated by the consolidated group. Group tax losses are effectively utilised before transferred tax losses.

Also include at **G** the foreign loss components of group tax losses that were utilised during the income year. A foreign loss component is not subject to the available fraction method of utilisation while it is also subject to the deduction limit in section 770-30 of the IT(TP)A.

Transferred

Write at **I** the amount of transferred tax losses utilised.

Transferred tax losses are those tax losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Transferred tax losses utilised on a concessional basis are also included at **I**.

Also include at **I** foreign loss components of tax losses transferred from joining entities that were utilised during the income year.

Total

Write at **R** the total of **G** and **I**.

> Transfer this amount to **RTax losses deducted** item **7** on your *Company tax return 2012*.

4 Transferred tax losses utilised

- Do not include transferred tax losses utilised in accordance with the concessional method.
- Do not include group tax losses (losses generated by a consolidated group) utilised at item **4**.
- Do not include transferred net capital losses or film losses utilised at item **4**.
- Show transferred net capital losses utilised at item **9**.
- For the definition of a tax loss, see section 995-1 of the ITAA 1997.
- If donated tax losses have been utilised, see Donated tax losses below.
- Do not include foreign loss components of tax losses transferred from joining entities. These amounts are included at **I** part A, item **3**. A foreign loss component is not subject to the available fraction method of utilisation while it is also subject to the deduction limit in section 770-30 of the IT(TP)A.

This item requires information on the amount of transferred tax losses utilised, excluding net capital losses and film losses. A head company utilises a transferred tax loss to the extent it is deducted from an amount of the head company's assessable income or exempt income.

Write at **A**, **D**, **G**, **J**, **M** and **P**, as required, the TFNs of those joining entities that had tax losses from their loss bundles utilised by applying the available fraction method. A bundle of losses consists of all the losses of a joining entity that are transferred to the head company at the same time.

If tax losses have been utilised for more than six loss bundles, write the joining entities' TFNs for the six loss bundles that had the largest amounts of tax losses utilised.

Write at **B**, **E**, **H**, **K**, **N** and **Q**, as required, the corresponding available fractions calculated for the loss bundles for joining entities whose TFNs are recorded at A, **D**, **G**, **J**, **M** and **P** respectively. However, if tax losses in a loss bundle are utilised with different available fractions (because losses have been 'donated' to other loss bundles) each of the amounts utilised is to be considered separately - see Donated tax losses below.

Each available fraction is to be completed to three decimal places - for example, 0.475, 0.520, 0.700. However, where rounding to three decimal places would result in an available fraction of nil, consolidated groups are permitted to round the available fraction to the first non-zero digit - see subsection 707-320(4) of the ITAA 1997. Where the available fraction is less than 0.0005, the amount of 0.000 should be written at the relevant label. Where the available fraction is greater than 0.0005, but less than 0.001, the fraction should be rounded up to 0.001.

Where losses are transferred for the first time, the available fraction is calculated as follows:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

For details of how the modified market value of the joining loss entity and adjusted market value of the head company are determined, see 3 Tax losses utilised in part A.

Where an available fraction has been adjusted as a result of certain events (for example, a new member joined the group and transferred a loss bundle) write the adjusted available fraction applicable at the end of the income year.

An available fraction cannot be a negative amount or greater than 1. If the sum of the group's available fractions would total more than 1, each available fraction is proportionally reduced - see subsection 707-320(2) of the ITAA 1997.

The available fraction for a bundle is adjusted or maintained when one of five adjustment events listed in the table in subsection 707-320(2) of the ITAA 1997 occurs.

For more information about the calculation of the available fraction, see 3 Tax losses utilised in part A.

Where the available fraction of a loss bundle has been increased as a result of one company - the value donor - donating value to a loss company, write the increased available fraction.

Write at **C**, **F**, **I**, **L**, **O** and **R**, as required, the corresponding amount of transferred tax losses utilised from loss bundles of joining entities whose TFNs are recorded at **A**, **D**, **G**, **J**, **M** and **P**, respectively.

If tax losses have been utilised from more than six loss bundles, write the six largest amounts utilised.

>Donated tax losses

- If one company (the value/loss donor) has donated some of its tax losses to another loss company (the real loss-maker) so that they can be used by the group in accordance with the real loss-maker's available fraction, do not include the amount of donated tax losses in the amounts shown for real loss-makers at **C**, **F**, **I**, **L**, **O** and **R**, as required.
- Show donated tax losses utilised with the TFN of the value/loss donor company, not the real loss-maker. The available fraction recorded for the value/loss donor in respect of tax losses donated is the available fraction of the real loss-maker company, not the value/loss donor's available fraction.
- If a value/loss donor company has both donated tax losses utilised and non-transferable tax losses utilised, multiple entries are required for the value/loss donor company. Show the donated tax losses utilised with the available fraction of the real loss-maker. Show the non-transferable tax losses utilised with the available fraction of the value/loss donor.

Example 3

A wholly owned group consists of a head company (Company H) and two subsidiary companies (Company A and Company B). The group consolidated on 1 July 2003.

Tax losses were transferred from Company A and Company B to Company H at the time the group was formed.

It was determined that the conditions for the value donor concession were satisfied. Modified market value has been donated to Company A from both Company H and Company B. The available fractions that were worked out, after applying the value donor concession, are as follows:

Company A	Company B
0.900	0.100

Details of subsidiary losses carried forward and companies to which they could have been transferred (assuming Subdivisions 170-A of the ITAA 1997 had not been amended to provide only for transfers involving an Australian branch of a foreign bank) are as follows:

Company	Transferor TFN	Tax loss carried forward to 2011-12	Transferable to:	
			Company H	Company A
A	222 222 222	1,000		
B	333 333 333	300 250	 **X**	 **X**

It was also determined that Company B satisfied the loss donor conditions and its transferable tax loss was donated to Company A to be used in accordance with Company A's increased available fraction - $300 of this loss was carried forward to the 2011-12 income year.

For the 2011-12 income year, the consolidated group has assessable income of $2,200 and deductions of $200. There are no capital gains

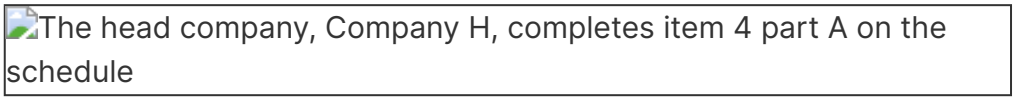
or assessable foreign income or film income. The available fraction amount for each bundle is as follows:

Loss bundle	Income amount	Multiplied by available fraction	Available fraction amount for bundle
	$		$
A	2,000	0.900	1,800
B	2,000	0.100	200

As a result, the consolidated group can utilise all of the tax losses in Company A's bundle ($1,000) and can also utilise all of Company B's transferable tax loss ($300) because it is used in accordance with Company A's increased available fraction.

Company B's non-transferable tax loss ($250) can only be utilised to the extent of $200. The remaining $50 of this loss will be carried forward to the 2012-13 income year.

The head company, Company H, completes item **4** part A on the schedule as follows:


The head company, Company H, completes item 4 part A on the schedule

Example 4

A consolidated group determines the following amounts of tax losses utilised from eight loss bundles for the 2011-12 income year:

Company	Transferor TFN	Available fraction	Tax losses utilised $
A	111 111 111	0.105	5,250
B	222 222 222	0.311	4,100
C	333 333 333	0.132	2,350
D	444 444 444	0.183	4,730

E	555 555 555	0.095	1,300
F	666 666 666	0.009	25
G	777 777 777	0.154	3,405
H	888 888 888	0.000	2,100

Company H and Company B have satisfied the value donor and loss donor conditions. Company H has donated its entire modified market value, as well as its transferable losses, to Company B, the real loss-maker. Company B's increased available fraction is 0.311, and Company H's reduced available fraction is 0.000.

The head company completes item **4** part A on the schedule as follows:

The head company completes item 4 part A on the schedule

Information has been recorded for the loss bundles that had the six largest amounts of tax losses utilised.

Company H's donated tax losses are shown against **its** TFN, not the TFN of the real loss-maker, Company B. The available fraction recorded for the value/loss donor (Company H) for donated tax losses is the increased available fraction of the real loss-maker company (Company B), **not** Company H's reduced available fraction of nil.

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5 Tax losses carried forward to later income years

6 Net capital losses transferred from joining entities (including head company) at consolidation

7 Net capital losses transferred from joining entities after consolidation

8 Net capital losses utilised

9 Transferred net capital losses utilised

10 Net capital losses carried forward to later income years

11 If you completed item 4 or item 9 in part A, were the apportionment rules applied?

5 Tax losses carried forward to later income years

- Do not include net capital losses or film losses carried forward to later income years at item **5**.
- Show net capital losses carried forward to later income years at item **10**.
- For the definition of a tax loss, see section 995-1 of the ITAA 1997.
- The head company must keep a record of its tax losses and account for any adjustments, including those made by the Australian Taxation Office (ATO). These records must be retained for five years after the end of the income year in which the loss was fully utilised.
- If required, the head company must be able to demonstrate not only the balance of any tax losses being utilised or carried forward, but also how those tax losses arose.
- Include the foreign loss components of tax losses - see Part E Foreign source losses.

Group

Write at **S** the amount of group tax losses, including the foreign losses components of group tax losses, carried forward to later income years under section 36-17 of the ITAA 1997. Group tax losses are those tax losses that have been generated by the consolidated group.

Transferred

Write at **V** the amount of transferred tax losses, including the foreign losses components of transferred tax losses carried forward to later income years under section 36-17 of the ITAA 1997. Transferred tax losses are tax losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Any concessional transferred tax losses carried forward are also included at **V**.

Total

Write at **U** the total of **S** and **V**.

> Transfer this amount to **U item 13Tax losses carried forward to later income years** on your *Company tax return 2012*.

The loss wastage rules apply in relation to amounts that are included in **U** item **13** on the company tax return. For more information on how this amount is calculated, see **Tax losses carried forward to later income years** at **13 Losses Information** in the *Company tax return instructions 2012* (NAT 0669).

Example 5

AAA consolidated group came into existence on 1 July 2003. On that date. tax losses of $2,500 were transferred to the head company from joining entities that satisfied the continuity of ownership and control transfer tests.

No other losses were transferred to the head company. AAA group determined that $900 of the tax losses transferred satisfied the conditions for use of the concessional method and the head company made a choice to apply this method for all the eligible losses. The balance of the losses transferred ($1,600) was to be utilised applying the available fraction method.

Up to the 2010-11 income year, the head company of the AAA group utilised $600 of the transferred tax losses using the concessional

method and $800 of the transferred tax losses applying the available fraction method.

The head company of the AAA group made a group tax loss in the 2008-09 income year of $200 and a group tax loss of $300 in the 2011-12 income year and is not able to use any of the transferred tax losses in those two years.

The head company completes item **5** part A on the schedule as follows:

6 Net capital losses transferred from joining entities (including head company) at consolidation

You only need to complete item **6** if your group consolidated during 2011-12.

- Do not include tax losses, film losses or converted foreign source losses at item **6**.
- Show tax losses, including foreign loss components of tax losses, transferred from joining entities (including head company) at consolidation at item **1**.
- Do not include net capital losses transferred after consolidation; include these losses at item **7**.
- Net capital loss has the meaning given by sections 102-10 and 165-114 of the ITAA 1997.
- Do not include net capital losses if this item was completed in an earlier income year.

This item requires information on the amount of net capital losses transferred from joining entities, including the head company, to the head company at the date the consolidated group has been brought into existence; that is, the date specified in the notice of choice given to the Commissioner - see section 703-50 of the ITAA 1997.

Write the relevant amount of net capital losses transferred at consolidation at **A**, **B** or **C**, depending on which loss transfer test, if any, has been satisfied.

When an entity joins a consolidated group as a subsidiary member part way through the entity's income year, it calculates its taxable income or loss for the period up to the time it joins the group. Generally, any unused carry forward net capital losses are transferred to the head company if those losses could have been utilised by the joining entity, assuming sufficient capital gains, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a period shorter than 12 months - see subsection 707-120(2) of the ITAA 1997.

Whether the net capital losses could have been utilised by the joining entity in the trial year is determined by applying modified versions of the usual tests for applying net capital losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of the ITAA 997.

Continuity of ownership test losses - companies only

Write at **A** those net capital losses that were transferred at consolidation because the continuity of ownership and control tests were satisfied for the ownership test period; that is, from the start of the year when the net capital loss was made until immediately after the joining time - see sections 165-96 and 707-120 of the ITAA 1997.

The following conditions apply:

- There must be persons who beneficially owned (between them) shares carrying (between them) the right to exercise more than 50% of the voting power in the company, and rights to receive more than 50% of the company's dividends, and rights to receive more than 50% of the company's capital distributions at all times during the ownership test period - see sections 165-150 to 165-160 of the ITAA 1997.
- Alternatively, it is reasonable to assume that there are persons (none of them companies or trustees) who between them have beneficial interests (directly or indirectly through one or more interposed entities) in shares in the company carrying (between them) a majority of the voting power, and rights to dividend and capital distributions at all times during the ownership test period - see sections 165-150 to 165-160 of the ITAA 1997.

- Where net capital losses are applied in an income year ending after 21 September 1999, the company must meet the 'same share and interest' requirement, except where the 'saving' rule applies - see section 165-165 and subsection 165-12(7) of the ITAA 1997.

A modified version of the above rules can apply to widely held companies and eligible Division 166 companies - see Division 166 of the ITAA 1997.

Anti-avoidance provisions are in Subdivision 175-CA of the ITAA 1997.

Same business test losses - companies only

Write at **B** those net capital losses that were transferred at consolidation where the continuity of ownership and control tests were failed, but the joining company satisfied the same business test.

The following table shows how the same business test applies for companies joining a consolidated group - see subsections 707-120(1) and (3) and subsections 707-125(1) to (3) of the ITAA 1997.

Same business transfer tests for companies	
In these circumstances:	**Test the joining entity's business at these points:**
1 The joining entity made the net capital loss for an income year starting after 30 June 1999	• just before the end of the income year in which the loss was made • the year of the ownership change, if that year started before the trial year, and • the trial year.
2 The joining entity made the net capital loss for an income year starting before 1 July 1999	• just before the time of the ownership change, and • the trial year.

For the purposes of the table, the time of the ownership change refers to the time when the joining entity first fails the ownership or control tests or, where the company is unable to point to the actual time the

ownership test was failed, the relevant default test time shown in the table in subsection 165-13(2) of the ITAA 1997.

Where a net capital loss is transferred as a result of satisfying the same business test, it may only be transferred again if, in addition to satisfying the usual transfer tests, the entity transferring the loss carried on the same business at these times:

- just before the end of the income year in which the loss was previously transferred to it, and
- during the trial year.

See subsection 707-135(2) of the ITAA 1997.

Under the same business test, the company must carry on the same business at all the times indicated in the preceding table; that is, throughout the trial year and year of ownership change (if applicable) and the other relevant time. The test is not satisfied if at any time the company did not carry on the same business as it did at another required time or it derives assessable income from:

- a business of a kind that it did not carry on before the relevant time, or
- a transaction of a kind that it did not enter into in the course of its business operations before the relevant time.

'Same' means 'identical' and not merely 'similar'. The term 'same business' is to be read as referring to the same business in the sense of the identical business. However, the term does not mean identical in all respects.

A company may expand or contract its activities without necessarily ceasing to carry on the same business. The organic growth of a business does not necessarily cause the business to fail the same business test, provided the business retains its identity.

However, if through a process of evolution a business changes its essential character, the entity may fail the test. Application of the same business test is a question of fact and is usually determined by a process of weighing up various relevant factors.

For more information, see sections 165-13 and 165-210 of the ITAA 1997; and also Taxation Ruling TR 1999/9, and Taxation Ruling TR 2007/2.

Other losses - trusts only

Write at **C** those net capital losses that were transferred at consolidation by a trust.

Example 6

A consolidated group came into existence on 10 March 2012. During the 2011-12 income year, the following net capital losses were transferred to the head company from joining entities that passed the loss transfer tests indicated.

Joining entity	Joining time	Net capital loss amount $	Transfer test passed	
			Continuity of ownership	Same business
Company A	10.3.2012	900	X	
Company B	10.3.2012	1,800		
Company C	9.4.2012	3,200		
Fixed trust X	10.3.2012	2,400		
Non-fixed trust Y	10.3.2012	1,100		

The head company completes item **6** part A on the schedule as follows:

As Company C's continuity of ownership net capital losses were transferred after consolidation, the amount transferred is written at **D** item **7**.

7 Net capital losses transferred from joining entities after consolidation

- Do not include tax losses, including foreign loss components of tax losses or film losses, at item **7**.
- Show tax losses, including foreign loss components of tax losses, transferred from joining entities after consolidation at item **2**.
- Do not include net capital losses transferred at consolidation; include these losses at item **6**.
- Net capital loss has the meaning given by sections 102-10 and 165-114 of the ITAA 1997.
- Do not include net capital losses transferred in an earlier income year.

This item requires information on the amount of net capital losses transferred from joining entities to the head company **after** the date the consolidated group has been brought into existence; that is, the date specified in the notice of choice given to the Commissioner - see section 703-50 of the ITAA 1997.

Write the relevant amount of net capital losses transferred during the income year at **D**, **E** or **F**, depending on which loss transfer test, if any, has been satisfied.

When an entity joins a consolidated group it calculates its taxable income or tax loss for the period up to the time it joins the group. Generally, any unapplied net capital losses are transferred to the head company if the losses could have been utilised by the joining entity, assuming sufficient capital gains, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a period shorter than 12 months - see subsection 707-120(2) of the ITAA 1997.

Whether the net capital losses could have been utilised by the joining entity in the trial year is determined by applying modified versions of the usual tests for applying net capital losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of the ITAA 1997.

Continuity of ownership test losses - companies only

Write at **D** those net capital losses that were transferred after consolidation because the continuity of ownership and control tests

were satisfied from the start of the year when the loss was incurred until immediately after the joining time.

For more information on the continuity of ownership and control tests, see 6 Net capital losses transferred from joining entities (including head company) at consolidation in part A.

Same business test losses - companies only

Write at **E** those net capital losses that were transferred after consolidation because the continuity of ownership and control tests were failed, but the joining company satisfied the same business test.

For more information on the same business test, see 6 Net capital losses transferred from joining entities (including head company) at consolidation in part A.

Other losses - trusts only

Write at **F** those net capital losses that were transferred after consolidation by a trust.

Example 7

A consolidated group came into existence on 1 July 2011. During the 2011-12 income year the following net capital losses were transferred to the head company from joining entities that passed the loss transfer tests indicated.

Joining entity	Joining time	Net capital loss amount $	Transfer test passed	
			Continuity of ownership	Same business
Company X	1.7.2011	2,500	X	
Company Y	2.7.2011	300		
Company Z	3.2.2012	4,800	X	
Fixed trust A	8.6.2012	250		

Non-fixed trust B	8.6.2012	3,200		

The head company completes item **7** part A on the schedule as follows:

As Company X's same business net capital losses were transferred at consolidation, the amount transferred is written at **B** item **6**.

8 Net capital losses utilised

- Do not include tax losses, including foreign loss components of tax losses or film losses, at item **8**.
- Show tax losses, including foreign loss components of tax losses, utilised at item **3**.
- Net capital loss has the meaning given by sections 102-10 and 165-114 of the ITAA 1997.
- You may also need to complete a CGT schedule. For more information, see *Guide to capital gains tax 2012* (NAT 4151).

This item requires information on the amount of net capital losses utilised. A head company utilises a net capital loss to the extent that it is applied to reduce an amount of the head company's capital gains.

Generally, a head company makes a capital gain or capital loss if certain events (called CGT events) happen. For more information about CGT events, see *Guide to capital gains tax 2012*. This publication includes:

- a capital gain or loss worksheet for calculating a capital gain or capital loss for each CGT event, and
- a CGT summary worksheet for calculating the company's net capital gain or capital loss.

A head company may be entitled to utilise carry-forward losses broadly comprising:

- losses generated by the consolidated group (group losses) and

- transferred losses that were generated by an entity before it became a member of the group.

Before utilising a group loss or a transferred loss, a head company is required to pass the continuity of ownership and control tests or the same business test.

For more information on the conditions applying to the continuity of ownership test, see 6 Net capital losses transferred from joining entities (including head company) at consolidation in part A.

For more information on the same business test, see sections 165-13 and 165-210 of the ITAA 1997; and also Taxation Ruling TR 1999/9, and Taxation Ruling TR 2007/2.

The operation of the continuity of ownership test for transferred losses is modified by Subdivision 707-B of the ITAA 1997. Firstly, the loss year is modified so that it starts from when the loss was transferred to the head company. However, subsection 707-140(2) of the ITAA 1997 provides that the head company is not prevented from utilising the loss for the income year in which the transfer occurs. Secondly, in determining whether a head company can utilise a net capital loss transferred to it after passing the continuity of ownership and control tests, changes in ownership of a loss company before it joined the consolidated group are recognised - see section 707-210 of the ITAA 1997.

Net capital losses generated by a consolidated group (group losses) are effectively utilised before transferred net capital losses - see paragraph 707-310(3)(b) of the ITAA 1997.

Concessional net capital losses are used after group net capital losses, and are effectively used before other transferred net capital losses - see subsections 707-350(2) and (4) of the IT(TP)A.

All losses transferred to a head company, for the first time from the entity that actually made them, constitute a bundle of losses. Losses in the bundle will be categorised by the 'sort of loss', such as a tax loss or net capital loss - see section 707-315 of the ITAA 1997.

Available fraction

An available fraction is worked out for each loss bundle. The available fraction limits the annual rate at which the bundle's losses may be recouped by the head company.

Where losses are transferred for the first time, the available fraction is calculated as follows:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

The modified market value of a joining entity is the amount that would be the market value of the entity at the joining time if:

- the entity has no losses and the balance of its franking account is nil
- the subsidiary members of the group at the time are separate entities and not divisions or parts of the head company of the group
- the entity's market value did not include an amount attributable (directly or indirectly) to a membership interest in a member of the group (other than the entity) that is a corporate tax entity or an entity that transferred losses to the head company, and
- a trust (other than a corporate tax entity or a trust with losses) contributes to the joining entity's market value only to the extent attributable to fixed entitlements (at the joining time) to income or capital of the trust that is not attributable (directly or indirectly) to membership interests in another member of the group that is a corporate tax entity or a trust with losses.

See section 707-325 of the ITAA 1997.

An increase in the value of the loss entity is excluded from the entity's modified market value if the increase results from either of these events:

- an injection of capital into the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee, or
- a non-arm's length transaction that involved the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee.

The rules apply to events that occur in the four years before the loss entity joins the group - see subsections 707-325(2) and (4) of the ITAA 1997; and also Taxation Ruling TR 2004/9.

The head company's adjusted market value at the initial transfer time is the amount that would be the market value at that time if:

- the head company did not have a loss of any sort for an income year ending before that time, and
- the balance of the head company's franking account was nil at that time.

See subsection 707-320(1) of the ITAA 1997. The value of the head company is worked out on the basis that subsidiary members of the consolidated group are part of the head company.

The Commissioner has a statutory obligation to ensure compliance with the market valuation requirements of the consolidation regime and to form a view as to whether valuations undertaken are accurate. Our online guide, Market valuation for tax purposes, will help you meet your tax obligations.

The available fraction is adjusted if certain events happen, for example, the consolidated group acquires a new loss entity or the sum of the available fractions in the group exceeds 1 - see subsection 707-320(2) of the ITAA 1997.

The use of transferred losses is apportioned when their available fraction applied for only part of the income year or when the available fraction changes during the income year - see section 707-335 of the ITAA 1997.

Apply the available fraction using the following **three-step process**:

1. Work out the amount of each category of the group's income or gains as specified in column 2 of the table in subsection 707-310(3) of the ITAA 1997. This is the group's total income or gains for each category less relevant deductions including group losses and concessional losses - but not transferred losses, the use of which is limited by their available fraction.
2. Multiply each category amount by the bundle's available fraction. The result is taken to be the head company's only income or gains for that category.
3. On the basis of the step 2 assumption, work out a notional taxable income for each loss bundle.

This process enables the head company to determine the amount of transferred losses of each sort it can use from the loss bundle to determine its actual taxable income.

An example of applying the available fraction using the three-step process is at Example 11.

Group

Write at **G** the amount of group net capital losses utilised. Group net capital losses are those net capital losses that have been generated by the consolidated group. Group net capital losses are effectively utilised before transferred net capital losses.

Transferred

Write at **I** the amount of transferred net capital losses utilised. Transferred net capital losses are net capital losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Transferred net capital losses utilised on a concessional basis are also included at **I**.

Total

Write at **J** the total of **G** and **I**.

9 Transferred net capital losses utilised

- Do not include transferred net capital losses utilised in accordance with the concessional method.
- Do not include group net capital losses (losses generated by a consolidated group) utilised at item **9**.
- Do not include transferred tax losses, including foreign loss components of tax losses, or film losses utilised at item **9**.
- Show transferred tax losses utilised at item **4**
- Net capital loss has the meaning given by sections 102-10 and 165-114 of the ITAA 1997.
- If donated net capital losses have been utilised, see the Donated net capital losses box.

This item requires information on the amount of transferred net capital losses utilised. A head company utilises a net capital loss to the extent that it is applied to reduce an amount of the head company's capital gains.

Write at **A**, **D**, **G**, **J**, **M** and **P**, as required, the TFNs of those joining entities that had net capital losses from their loss bundles utilised

applying the available fraction method. A bundle of losses consists of all the losses of a joining entity that are transferred to the head company at the same time.

If net capital losses have been utilised for more than six loss bundles, write the joining entities' TFNs for the six loss bundles that had the largest amounts of net capital losses utilised.

Write at **B**, **E**, **H**, **K**, **N** and **Q**, as required, the corresponding available fractions calculated for the loss bundles for joining entities whose TFNs are recorded at **A**, **D**, **G**, **J**, **M** and **P**, respectively. However, if net capital losses in a loss bundle are utilised with different available fractions (because losses have been 'donated' to other loss bundles), each of the amounts utilised is to be considered separately - see the Donated net capital losses box.

Complete each available fraction to three decimal places (for example, 0.475, 0.520, 0.700). However, where rounding to three decimal places would result in an available fraction of nil, consolidated groups are permitted to round the available fraction to the first non-zero digit - see subsection 707-320(4) of the ITAA 1997. Where the available fraction is less than 0.0005, the amount of 0.000 should be written at the relevant item. Where the available fraction is greater than 0.0005, but less than 0.001, the fraction is rounded up to 0.001

Where losses are transferred for the first time, the available fraction is calculated as follows:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

For details of how the modified market value of the joining loss entity and adjusted market value of the head company are determined, see 8 Net capital losses utilised in part A.

Where an available fraction has been adjusted as a result of certain events (for example, a new member joined the group and transferred a loss bundle) write the adjusted available fraction applicable at the end of the income year.

An available fraction cannot be a negative amount or greater than 1.

If the sum of the group's available fractions would total more than 1, each available fraction is proportionally reduced - see subsection 707-320(2) of the ITAA 1997.

The available fraction for a bundle is adjusted or maintained when one of five adjustment events listed in the table in section 707-320(2) of the ITAA 1997 occurs.

For more information regarding the calculation of the available fraction, see 8 Net capital losses utilised in part A.

Where the available fraction of a loss bundle has been increased as a result of one company, the value donor, donating value to a loss company, write the increased available fraction.

Write at **C**, **F**, **I**, **L**, **O** and **R**, as required, the corresponding amount of transferred net capital losses utilised from loss bundles of joining entities whose TFNs are recorded at **A**, **D**, **G**, **J**, **M** and **P** respectively.

If net capital losses have been utilised from more than six loss bundles, write the six largest amounts utilised.

>Donated net capital losses

- If one company (the value/loss donor) has donated some of its net capital losses to another loss company (the real loss-maker) so that they can be used by the group in accordance with the real loss-maker's available fraction, do not include the amount of donated net capital losses in the amounts shown for real loss-makers at any of **C**, **F**, **I**, **L**, **O** and **R** as required.
- Show donated net capital losses utilised with the TFN of the value/loss donor company, not the real loss-maker. The available fraction recorded for the value/loss donor in respect of net capital losses donated is the available fraction of the real loss-maker company, not the value/loss donor's available fraction.
- If a value/loss donor company has both donated net capital losses utilised and non-transferable net capital losses utilised, multiple entries are required for the value/loss donor company. Show the donated net capital losses utilised with the available fraction of the real loss-maker. Show the non-transferable net capital losses utilised with the available fraction of the value/loss donor.

Example 8

A wholly owned group consists of a head company, Company H, and two subsidiary companies, Company X and Company Y. The group consolidated on 1 July 2003.

Net capital losses were transferred from Company X and Company Y to Company H at the time the group formed on 1 July 2003.

It was determined that the conditions for the value donor concession were satisfied. Modified market value has been donated to Company X from both Company H and Company Y. The available fractions that were worked out, after applying the value donor concession, are as follows:

Company X	Company Y
0.900	0.100

Details of subsidiary losses carried forward and companies to which they could have been transferred (assuming Subdivision 170-B of the ITAA 1997 had not been amended to provide only for transfers involving an Australian branch of a foreign bank) are as follows:

Company	Transferor TFN	Net capital loss carried forward to 2010-11	Transferable to:	
			Company H	Company X
X	222 222 222	1,200		
Y	333 333 333	500		
		300	**X**	**X**

It was also determined that Company Y satisfied the loss donor conditions and its transferable net capital loss was donated to Company X to be used in accordance with Company X's increased

available fraction. $500 of this loss was carried forward to the 2011-12 income year.

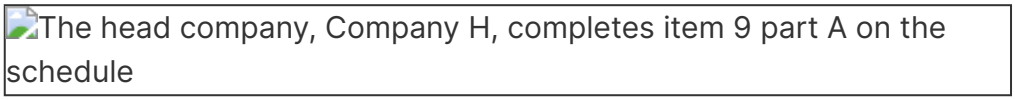
For the 2011-12 income year, the consolidated group had capital gains of $2,000. The available fraction amount for each bundle is as follows:

Loss bundle	Income amount	Multiplied by available fraction	Available fraction amount for bundle
	$		$
X	2,000	0.900	1,800
Y	2,000	0.100	200

As a result, the consolidated group can utilise all of the net capital losses in Company X's bundle ($1,200) and can also utilise all of Company Y's transferable net capital loss ($500) because it is used in accordance with Company X's increased available fraction.

Company Y's non-transferable net capital loss ($300) can only be utilised to the extent of $200. The remaining $100 of this loss will be carried forward to the 2012-13 income year.

The head company, Company H, completes item **9** part A on the schedule as follows:


The head company, Company H, completes item 9 part A on the schedule

Example 9

A consolidated group determined the following amounts of net capital losses utilised from eight loss bundles for the 2011-12 income year:

Company	Transferor TFN	Available fraction	Net capital losses utilised $
A	111 111 111	0.129	2,390
B	222 222 222	0.011	33

C	333 333 333	0.324	3,950
D	444 444 444	0.175	4,655
E	555 555 555	0.000	1,920
F	666 666 666	0.157	3,515
G	777 777 777	0.083	1,250
H	888 888 888	0.108	4,975

Company C and Company E have satisfied the value donor and loss donor conditions. Company E has donated its entire modified market value to Company C and also donated transferable losses to Company C, the real loss-maker. Company C's increased available fraction is 0.324 and Company E's reduced available fraction is 0.000.

The head company completes item **9** part A on the schedule as follows:

The head company completes item 9 part A on the schedule

Information has been recorded for the loss bundles that had the six largest amounts of net capital losses utilised.

Company E's donated net capital losses are shown against **its** TFN, not the TFN of the real loss-maker, Company C. The available fraction recorded for the value/loss donor, Company E, for the donated net capital losses is the increased available fraction of the real loss-maker company, Company C, **not** Company E's reduced available fraction of nil.

10 Net capital losses carried forward to later income years

- Do not include tax losses, including foreign loss components of tax losses, or film losses carried forward to later income years at item **10**.
- Write tax losses, including foreign loss components of tax losses, carried forward to later income years at item **5**.

- Net capital loss has the meaning given by sections 102-10 and 165-114 of the ITAA 1997.
- The head company must keep a record of its net capital losses and account for any adjustments including those made by the ATO. These records must be retained for five years after a CGT event has occurred or the losses recouped, whichever is later.
- If required the head company must be able to demonstrate not only the balance of any net capital losses being utilised or carried forward, but also how those net capital losses arose.

Group

Write at **S** the amount of group net capital losses carried forward to later income years under section 102-15 of the ITAA 1997. Group net capital losses are those net capital losses that have been generated by the consolidated group.

Transferred

Write at **U** the amount of transferred net capital losses carried forward to later income years under section 102-15 of the ITAA 1997. Transferred net capital losses are net capital losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Any concessional transferred net capital losses carried forward are also included at **U**.

Total

Write at **V** the total of **S** and **U**.

> Transfer this amount to **V** item **13Net capital losses carried forward to later income years** on your *Company tax return 2012*.

Example 10

XYZ consolidated group came into existence on 1 July 2003. On that date, net capital losses of $2,100 were transferred to the head company from joining entities that satisfied the continuity of ownership and control transfer tests. No other losses were transferred to the head company. XYZ group determined that $1,200 of the net capital losses transferred satisfied the conditions for use of the concessional method and the head company made a choice to apply this method for

all the eligible losses. The balance of the losses transferred ($900) was to be utilised applying the available fraction method.

Up to the 2010-11 income year, the head company of the XYZ group utilised $800 of the transferred net capital losses using the concessional method and $700 of the transferred tax losses applying the available fraction method.

The head company of the XYZ group made a group net capital loss of $200 in the 2010-11 income year and a group net capital loss of $300 in the 2011-12 income year and was not able to utilise any of the transferred net capital losses in those two income years.

The head company completes item **10** part A on the schedule as follows:

11 If you completed item 4 or item 9 in part A, were the apportionment rules applied?

If transferred tax losses or transferred net capital losses have been utilised from any loss bundle applying the available fraction method, you **must** complete this item.

The use of transferred losses is apportioned if their available fraction applied for only part of the income year or when the available fraction changes during the income year. Apportionment applies if:

- losses in a bundle are transferred to the head company by a subsidiary member that is joining part way through the head company's income year, or
- available fractions are adjusted during the income year. Adjustments to available fractions are required if additional loss bundles are transferred to the head company at a later time or because there has been an injection of capital or a non-arm's length transaction - see subsection 707-320(2) of the ITAA 1997. In these cases, available fractions will have different numerical values for different periods of the income year.

Apportionment in the first case ensures that a subsidiary's losses are only offset against income generated by the group after the subsidiary becomes a member.

Apportionment in the second case ensures that an adjusted available fraction that is less than the previous fraction only applies from the date of the event that triggered the adjustment.

Note: If a consolidated group is formed part way through the head company's income year, the head company's use of its own prior year losses (transferred to itself under Subdivision 707-A of the ITAA 1997 on consolidation) will be unrestricted in respect of income broadly attributable to the pre-consolidation period. This is achieved by treating the losses actually incurred by the head company, which are subsequently transferred to itself at consolidation, as being in a bundle with an available fraction of 1 for the part of the head company's income year that is before the formation of the consolidated group.

See section 707-335 of the ITAA 1997.

Print **X** in the appropriate box at **W**.

>Example 11

Applying the available fraction using the three-step process

XYZ consolidated group is working out the group's taxable income for the 2011-12 income year.

For the 2011-12 income year the group had capital gains of $900 and capital losses of $200. The group's only other assessable income was $9,000. Deductions relating to that income are $990.

The group has a tax loss carried forward from the previous income year of $60.

The group's remaining transferred losses at that time, and their available fractions, are set out in the table below.

The continuity of ownership and control tests or same business tests are passed in respect of the recoupment of all these losses.

Loss bundle	Available fraction	Unused transferred losses
Bundle 1	0.146	$50 net capital losses $3,000 tax losses (not film)
Bundle 2	0.214	$100 net capital losses

		$5,000 tax losses (not film)

Step 1: Work out the categories of group income or gains.

Income or gains	Amount excluding group losses	Less: Other allowable deductions and reductions	Less: Group and concessional losses of that sort	Col Inc and gai ava for bur Hea Cor
	$	$	$	
Capital gains	900	200	0	
Other assessable income	9,000	990	60	

Step 2: Calculate the fraction of the income and gain that is attributable to each bundle.

Column 1 Income or gains	Loss bundle	Column 5 amount	Multiplied by available fraction	Available fraction amount for bundle
		$		$
Capital gains	Bundle 1	700	0.146	102
	Bundle 2	700	0.214	150
Other assessable income	Bundle 1	7,950	0.146	1,161

	Bundle 2	7,950	0.214	1,701

STEP 3(a): Work out a notional taxable income for bundle 1.

As a result of step 2, it is assumed that XYZ group's only capital gain is $102. On the basis of that assumption, the whole of the $50 net capital loss from bundle 1 can be used. This results in a (notional) net capital gain for bundle 1 of $52 ($102 - $50).

Notional taxable income for bundle 1:

Assessable income	**$**	**Deductions**	**$**
Net capital gain	52	Tax losses (bundle 1)	1,213
Other assessable income	1,161		
Total	**1,213**	**Total**	**1,213**

As a result, the XYZ group is able to use $1,213 of its tax losses from bundle 1.

Step 3(b): Work out a notional taxable income for bundle 2.

As a result of step 2, it is assumed that XYZ group's only capital gain is $150. On the basis of that assumption, the whole of the $100 net capital loss from bundle 2 can be used. This results in a (notional) net capital gain for bundle 2 of $50 ($150 - $100).

Notional taxable income for bundle 2:

Assessable income	**$**	**Deductions**	**$**
Net capital gain	50	Tax losses (bundle 2)	1,751
Other assessable income	1,701		

Total	**1,751**	**Total**	**1,751**

So, the XYZ group is able to use $1,751 of its tax losses from bundle 2.

Determine XYZ group's actual taxable income or gain.

First work out XYZ group's net capital gain.

Capital gain	**$**	**Capital losses**	**$**
Capital gain	900	Group capital losses	200
		Net capital losses:	
		(bundle 1)	50
		(bundle 2)	100
Total	**900**	**Total**	**350**

XYZ group's net capital gain is $550 ($900 - $350).

Assessable income	**$**	**Deductions**	**$**
Net capital gain	550	Deductions	990
Other assessable income	9,000	Group losses	60
		Tax losses:	
		(bundle 1)	1,213
		(bundle 2)	1,751
Total	**9,550**	**Total**	**4,014**

XYZ group's taxable income is $5,536 ($9,550 - $4,014).

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On this page

Part B Cancellation of transfer of losses

1 Has the head company cancelled the transfer of a loss?

2 Details of cancellation of transfer of losses

Part C Ownership test and same business test

Part D Life insurance companies

Part B Cancellation of transfer of losses

1 Has the head company cancelled the transfer of a loss?

A head company can make a choice to cancel the transfer of a loss of a joining entity. If the choice is made, the loss cannot be used by any entity for an income year ending after the joining time - see sections 707-145 and 707-150 of the ITAA 1997.

Print **X** in the appropriate box at **A**.

If the answer is **Yes**, complete item **2**.

If the answer is **No**, go to **Part COwnership test and same business test**.

2 Details of cancellation of transfer of losses

Write at **B**, **D**, **F** and **H** the TFNs of those joining entities that had transfers of one or more losses cancelled during the income year.

If the transfer of losses was cancelled for more than four joining entities, write the TFNs for only the four joining entities that had the largest total amounts of cancellation of transfer of losses.

Write at **C**, **E**, **G** and **I**, as required, the total amount of the cancellation of the transfer of one or more losses for joining entities whose TFNs are recorded at **B**, **D**, **F** and **H** respectively.

Part C Ownership test and same business test

1 For each joining company that transferred a same business test tax loss or same business test net capital loss to the head company, determine the year of income in which the joining company first failed the continuity of ownership or control tests. Against each of the listed years, show the total amount of losses which first failed the continuity of ownership or control tests that year.

You need to complete item **1** only if your group consolidated during the 2011-12 income year.

- Do not include transferred film losses at item **1**.
- Do not include losses transferred by a joining company that satisfied the continuity of ownership and control transfer tests at item **1**.
- Do not include losses transferred by a joining trust at item **1**.

The aim of item **1** is to find out (in respect of companies that transferred losses to a head company of a consolidated group because a same business transfer test was satisfied):

- the period of time between the year of failure of the continuity of ownership or control transfer tests and the trial year, and
- the losses that failed the continuity of ownership or control tests at the joining time and in the trial year.

When a company joins a consolidated group any unused carry forward losses are transferred to the head company if the losses could have been utilised by the joining entity, assuming sufficient income or gains in the 'trial year' which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a period shorter than 12 months - see subsection 707-120(2) of the ITAA 1997.

Whether the losses could have been utilised by the joining company in the trial year is determined by applying modified versions of the usual tests for deducting tax losses and applying net capital losses. A joining company with a carry forward tax loss or net capital loss will need to satisfy the same business test unless the company satisfies the following continuity of ownership test conditions (and the control test):

- There must be persons who beneficially owned (between them) shares carrying (between them) the right to exercise more than 50% of the voting power in the company, rights to receive more than 50% of the company's dividends and rights to receive more than 50% of the company's capital distributions at all times during the ownership test period - see sections 165-150 to 165-160 of the ITAA 1997.
- Alternatively it is reasonable to assume that there are persons (none of them companies or trustees) who between them have beneficial interests (directly or indirectly through one or more interposed entities) in shares in the company carrying (between them) a majority of the voting power, and rights to dividend and capital distributions at all times during the ownership test period - see sections 165-150 to 165-160 of the ITAA 1997.
- Where tax losses are claimed in an income year ending after 21 September 1999, the company must meet the 'same share and interest' requirement, except where the 'saving' rule applies - see section 165-165 and subsection 165-12(7) of the ITAA 1997.

A modified version of the above rules can apply to widely held companies and eligible Division 166 companies - see Division 166 of the ITAA 1997.

Anti-avoidance provisions are in Subdivisions 175-A, 175-B and 175-CA of the ITAA 1997.

Same business test losses - companies only

The following table shows how the same business test applies for companies joining a consolidated group.

See subsections 707-120(1) and (3) and subsections 707-125(1) to (3) of the ITAA 1997.

Same business transfer tests for companies	
In these circumstances:	Test the joining entity's business at these points**:**
1 The joining entity made the loss for an income year starting after 30 June 1999	• just before the end of the income year in which the loss was made • the year of the ownership change, if that year started before the trial year, and • the trial year.
2 The joining entity made the loss for an income year starting before 1 July 1999	• just before the time of the ownership change, and • the trial year.

For the purposes of the table, the time of the ownership change refers to the time when the joining entity first fails the ownership or control tests or, where the company is unable to point to the actual time the ownership test was failed, the relevant default test time shown in the table in subsection 165-13(2) of the ITAA 1997.

Where a loss is transferred as a result of satisfying the same business test, it may only be transferred again if, in addition to satisfying the usual transfer tests, the entity transferring the loss carried on the same business at these times:

- just before the end of the income year in which the loss was previously transferred to it, and
- during the trial year.

See subsection 707-135(2) of the ITAA 1997.

Under the same business test, the company must carry on the same business at all the times indicated in the preceding table; that is,

throughout the trial year and year of the ownership change (if applicable) and the other relevant time. The test is not satisfied if at any time the company did not carry on the same business as it did at another required time or it derives assessable income from:

- a business of a kind that it did not carry on before the relevant time, or
- a transaction of a kind that it did not enter into in the course of its business operations before the relevant time.

'Same' means 'identical' and not merely 'similar'. The term 'same business' is to be read as referring to the same business, in the sense of the identical business. However, the term does not mean identical in all respects.

A company may expand or contract its activities without necessarily ceasing to carry on the same business. The organic growth of a business does not necessarily cause the business to fail the same business test provided the business retains its identity.

However, if through a process of evolution a business changes its essential character, the entity may fail the test. Application of the same business test is a question of fact and is usually determined by a process of weighing up various relevant factors.

For more information, see sections 165-13 and 165-210 of the ITAA 1997; and also Taxation Ruling TR 1999/9, and Taxation Ruling TR 2007/2.

Year ownership test failed 2011-12

Write at **J** the total amount of tax losses and net capital losses of joining companies that first failed the continuity of ownership or control tests in the 2011-12 income year, but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2010-11

Write at **K** the total amount of tax losses and net capital losses of joining companies that first failed the continuity of ownership or control tests in the 2010-11 income year, but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2009-10

Write at **L** the total amount of tax losses and net capital losses of joining companies that first failed the continuity of ownership or

control tests in the 2009-10 income year, but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2008-09

Write at **M** the total amount of tax losses and net capital losses of joining companies that first failed the continuity of ownership or control tests in the 2008-09 income year, but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2007-08 and earlier income years

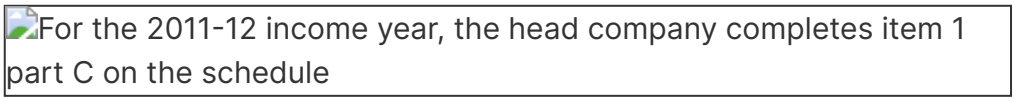
Write at **N** the total amount of tax losses and net capital losses of joining companies that first failed the continuity of ownership or control tests in the 2007-08 and earlier income years, but satisfied the same business test. If there is no amount, leave blank.

Example 12

A consolidated group came into existence on 1 July 2011. During the 2011-12 income year, the following joining companies transferred tax losses and net capital losses because they satisfied the same business transfer test:

Joining company	Loss year	Amount $	Sort of loss	Year of ownership change
A	1995-96	1,000	Tax	1998-99
				2008-09
	2002-03	50	Net capital	2010-11
B	2000-01	350	Tax	2011-12
	2002-03	400	Net capital	2011-12
C	2000-01	550	Net capital	2008-09

For the 2011-12 income year, the head company completes item **1** part C on the schedule as follows:


For the 2011-12 income year, the head company completes item 1 part C on the schedule

The amount of the tax loss incurred by Company A ($1,000) is written at **N** because the first change of ownership occurred during the 1998-99 income year.

2 Amount of losses utilised after consolidation, for which the continuity of ownership test is not passed but the same business test is satisfied

- Do not include film losses utilised at item **2**.
- Do not include at item **2** losses utilised for which the head company satisfied the continuity of ownership test.

Write at item **2** the amount of tax losses, including foreign loss components of tax losses, and net capital losses utilised during the 2011-12 income year by the head company after consolidation, where the continuity of ownership test was not passed, but the same business test was satisfied.

Before a head company can utilise a loss generated by the consolidated group, or a loss transferred from a joining entity, it must satisfy the continuity of ownership and control tests or the same business test. Subdivision 707-B of the ITAA 1997 modifies the recoupment tests for transferred losses. The loss year is modified so that it starts from when the loss was transferred to the head company. Accordingly, losses transferred to a head company of a consolidated group because they satisfied the same business transfer test are effectively refreshed in the hands of the head company, in that the ownership test period for these losses starts at the time they are transferred to the head company.

However, in determining whether a head company can use a loss transferred to it from a joining company which passed the continuity of ownership and control tests, the changes in ownership of the joining company before it joined the consolidated group are taken into account. In addition, it is assumed that the head company's interest in the joining company remains unchanged from the joining time. This means that in determining if a head company can utilise a loss transferred to it from a joining company, the head company will satisfy

the continuity of ownership test if the joining company would have satisfied the continuity of ownership test in respect of the loss.

For more information on the same business test, see sections 165-13 and 165-210 of the ITAA 1997; and also Taxation Ruling TR 1999/9, and Taxation Ruling TR 2007/2.

Subdivision 719-F of the ITAA 1997 modifies the rules about transferring and utilising losses in relation to MEC groups.

Tax losses

Write at **O** the amount of tax losses, including foreign loss components of tax losses, utilised by the head company which did not satisfy the continuity of ownership and control tests, but did satisfy the same business test.

Net capital losses

Write at **P** the amount of net capital losses utilised by the head company which did not satisfy the continuity of ownership and control tests, but did satisfy the same business test.

Example 13

A consolidated group came into existence on 1 July 2011. On that date the following losses were transferred to the head company from a joining company that satisfied the continuity of ownership and control transfer tests.

Year loss incurred	Sort of loss	Amount $
2000-01	Tax	1,200
2001-02	Net capital	4,600

During the period from the start of the loss year (1 July 2000) until immediately after the joining time (1 July 2011) there was a 40% change in the persons who controlled the voting power of the head company and had the rights to the company's dividends and capital distributions. The joining company was a 100% owned subsidiary of the head company during this period.

For the 2011-12 income year, the consolidated group generates sufficient capital gains and other assessable income to enable the

transferred tax and net capital losses to be fully utilised applying the available fraction method. On 1 August 2011, there is a 20% change in the persons who, at the start of the loss year, controlled the voting power of the head company and had rights to the company's dividends and capital distributions. The head company does not satisfy the continuity of ownership test because of the change of majority ownership on 1 August 2011; that is, combined ownership changes of 60% (40% + 20%). However, the head company satisfies the same business test because the consolidated group carried on the same business during the 2011-12 income year as it did immediately before the change of ownership.

In determining whether a head company can utilise a loss transferred to it from a joining company that passed the continuity of ownership and control tests, changes in ownership of the joining company before it joined the consolidated group are taken into account.

The head company completes item **2** part C on the schedule as follows:

3 Amount of losses carried forward to later income years for which the same business test must be satisfied before they can be utilised

- Do not include film losses carried forward at item **3**.
- Do not include at item **3** losses carried forward to later income years for which the head company satisfies the continuity of ownership test.

Write at item **3** the amount of tax losses, including foreign loss components of tax losses, and net capital losses carried forward to later income years for which the head company must satisfy the same business test to utilise these losses.

Before a head company can utilise a loss generated by the consolidated group or a loss transferred from a joining entity, it must satisfy the continuity of ownership and control tests or the same business test. Subdivision 707-B of the ITAA 1997 modifies the recoupment tests for transferred losses. The loss year is modified so that it starts from when the loss was transferred to the head company. Accordingly, losses transferred to a head company of a consolidated group because they satisfied the same business transfer test are

effectively refreshed in the hands of the head company, in that the ownership period for these losses starts at the time they are transferred to the head company.

However, in determining whether a head company can use a loss transferred to it from a joining company that passed the continuity of ownership and control tests, changes in ownership of the joining company before it joined the consolidated group are taken into account. In addition, it is assumed that the head company's interest in the joining company remains unchanged from the joining time. This means that in determining if a head company can utilise a loss transferred to it from a joining company, the head company will satisfy the continuity of ownership test if the joining company would have satisfied the continuity of ownership test in respect of the loss.

For more information on the same business test, see sections 165-13 and 165-210 of the ITAA 1997; and also Taxation Ruling TR 1999/9, and Taxation Ruling TR 2007/2.

Tax losses

Write at **Q** the amount of tax losses, including foreign loss components of tax losses, carried forward to later income years for which the head company must satisfy the same business test to utilise these losses.

Net capital losses

Write at **R** the amount of net capital losses carried forward to later income years for which the head company must satisfy the same business test to utilise these losses.

Example 14

A consolidated group came into existence on 1 July 2011. On that date, tax losses of $2,200 were transferred to the head company from a joining company that satisfied the continuity of ownership and control transfer tests.

For the 2011-12 income year, the consolidated group made a group tax loss of $1,700 and a group net capital loss of $3,500, which are carried forward to the 2012-13 income year.

There was a change of majority ownership of the head company during the 2011-12 year, but this did not result in the head company joining another consolidated group. The head company must satisfy the same business test in later income years to utilise the losses

carried forward comprising tax losses of $3,900 ($2,200 + $1,700) and net capital losses of $3,500.

The head company completes item **3** part C on the schedule as follows:

The head company completes item 3 part C on the schedule

Part D Life insurance companies

The head company of a consolidated group that has one or more subsidiary members that are life insurance companies at any time during the income year is taken to be a life insurance company for the purposes of an income tax assessment.

Part D is required to be completed where the head companies have the following losses carried forward to later income years in the complying superannuation/FHSA class:

- tax losses, or
- net capital losses.

Complying superannuation/FHSA class tax losses carried forward to later income years

Write at **T** the amount of tax losses carried forward to later income years from the complying superannuation/FHSA class. This includes prior year tax losses from the complying superannuation/FHSA class carried forward as they have not been utilised.

Generally, a life insurance company will have a tax loss of the complying superannuation/FHSA class for an income year if the company's complying superannuation/FHSA deductions for that income year exceed the sum of:

- the assessable income from the complying superannuation/FHSA class for that income year, and
- net exempt income for the income year that is attributable to the complying superannuation/FHSA assets.

Complying superannuation/FHSA net capital losses carried forward to later income years

Write at **U** the amount of net capital losses carried forward to later income years from the complying superannuation/FHSA class. This

includes prior year net capital losses from the complying superannuation/FHSA class carried forward as they have not been utilised.

A life insurance company has a net capital loss from the complying superannuation/FHSA class for the income year if during the income year, the capital losses made from complying superannuation/FHSA assets exceed all capital gains made from complying superannuation/FHSA assets.

In working out the tax loss of the complying superannuation/FHSA class, the single entity rule is disregarded - see section 713-510A of the ITAA 1997 for more information.

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> Part F Tax losses reconciliation for consolidated groups
>
> Taxpayer's declaration

Part E Foreign source losses

Foreign losses are no longer quarantined from domestic assessable income, or from assessable foreign income of a different class. Resident taxpayers are no longer required to make an election to deduct domestic tax losses against assessable foreign income. As a result, in utilising deductions, no distinction is made in respect of the source of the assessable income, whether foreign or domestic; that is, a taxpayer combines both foreign and domestic deductions. Where the combined deductions exceed assessable income and net exempt

income, the excess is a tax loss and can potentially be deducted from assessable income in a later income year.

The changes to the foreign loss provisions apply from the first income year starting on or after 1 July 2008 (the commencement year).

Prior year overall foreign losses that existed at the beginning of the commencement year are subject to transitional rules. Generally, overall foreign losses in respect of the four former classes of assessable foreign income for each earlier income year were grouped together and converted into a tax loss. The converted loss is known as the foreign loss component of a tax loss. Utilisation of the foreign loss component of a tax loss is restricted for the first four years - the commencement year and the three subsequent income years. After this transitional period, any remaining undeducted tax loss will be subject to the ordinary loss utilisation rules.

See Subdivisions 770-A Transitional foreign losses (common rules) and 770-B Transitional foreign losses (special rules for consolidated groups) of the IT(TP)A.

1 Foreign loss component of a tax loss

Foreign loss component of tax losses deducted

Write at **K** the foreign loss component of tax losses deducted in this income year.

Include the amount shown at **K**, with other tax losses deducted (if any), at **RTax losses deducted** item **7** on your *Company tax return 2012*.

Foreign loss component of tax losses carried forward

Write at **L** the foreign loss component of tax losses carried forward to later income years.

The amount shown at **L** should equal the amount at **J** less the amount at **K**.

Include the amount shown at **L**, with other tax losses carried forward (if any), at **U** item **13Tax losses carried forward to later income years** on your *Company tax return 2012*.

Foreign loss component of tax loss transferred from joining entities

Write at **M** the foreign loss component of tax losses transferred from joining entities during the income year.

A head company that seeks to deduct a transferred tax loss with a foreign loss component that was transferred to the head company during its 2012 income year must take into account any amounts deducted by the joining entity, including in the joining entity's non-membership period.

2 Controlled foreign company losses

A CFC is no longer required to quarantine revenue losses into separate classes of notional assessable income. However, CFC losses continue to be quarantined in the CFC that incurred them.

The amounts shown at **N**, **O** and **P** are the totals of the entity's share of losses incurred by CFCs. The entity's share of a loss of a CFC is calculated by applying its attribution percentage in the CFC to the loss of the CFC.

Current Year CFC Losses

Write at **N** the total amount of the entity's share of current CFC losses for a statutory accounting period that ends within the 2011-12 income year.

CFC losses deducted

Write at **O** the total of the entity's share of CFC losses deducted for a statutory accounting period that ends within the 2011-12 income year.

CFC losses carried forward

Write at **P** the total amount of the entity's share of CFC losses, if any, that is available to be carried forward to statutory accounting periods that end in later income years.

Part F Tax losses reconciliation for consolidated groups

This part requires you to reconcile the company's tax losses brought forward from the prior income year with those tax losses carried forward to later income years.

Note: Do not include net capital losses or film losses at this item.

Balance of tax losses brought forward from prior year

Write at **A** the undeducted amount of tax losses incurred by the company and brought forward to the 2011-12 income year under section 36-17 of the ITAA 1997. The balance of losses brought forward from prior income years includes undeducted tax losses remaining within a bundle of losses; that is, tax losses transferred in a prior income year under Subdivision 707-A (including those with a nil available fraction).

Tax losses transferred from joining entities under Subdivision 707-A

Write at **C** the amount of tax losses transferred from joining entities to the head company during the 2011-12 income year.

Note: Tax losses transferred from joining entities in prior years are included at **A Balance of tax losses brought forward from the prior income year**.

Transferred tax losses with a nil available fraction that have been applied

The *Tax Laws Amendment (2009 Measures No. 4) Act 2009* amended the income tax law to ensure losses transferred to the head company of a consolidated group or a multiple entry consolidated group by a joining entity that is insolvent at the joining time can be used by the head company in certain circumstances, with effect from 1 July 2002. The head company can apply transferred losses with a nil available fraction to reduce a net forgiven amount under the commercial debt forgiveness rules, reduce a capital allowance adjusted under the limited recourse debt rules, and reduce the capital gain that arises under CGT event L5 when the joining entity subsequently leaves the group.

See section 707-415 of the ITAA 1997.

Write at **L** the amount of tax losses with a nil available fraction that have been applied to reduce:

- a net forgiven amount under the commercial debt forgiveness rules
- a capital allowance adjusted under the limited recourse debt rules, or
- the capital gain that arises under CGT event L5 when the joining entity subsequently leaves the group.

Net forgiven amount of debt

Tax losses brought forward and losses transferred from joining entities are reduced by any commercial debt forgiveness amounts - see Division 245 of the ITAA 1997. If a commercial debt owed by the company is forgiven during the income year, apply in the following order the net amount of debts forgiven to reduce the company's deductible revenue losses, net capital losses, certain undeducted revenue or capital expenditure, and the cost bases of CGT assets.

The *Tax Laws Amendment (2009 Measures No. 4) Act 2009* amended the income tax law so that a transferred loss with a nil available fraction can be used by the head company of a consolidated group to reduce a net forgiven amount under the commercial debt forgiveness rules, with effect from 1 July 2002 - see section 707-415 of the ITAA 1997.

Write at **D** the total net forgiven amount applied to reduce tax losses (if any) incurred in years of income before the forgiveness year of income or to reduce tax losses transferred under Subdivision 707-A from joining entities in the current year.

Tax loss incurred (if any) during current income year

Write at **E** the company's tax loss for the year, disregarding net exempt income and excess franking offsets.

There is a limit on the total of the amount you can deduct in the income year for gifts and contributions - see section 26-55 of the ITAA 1997. Deductions for gifts or contributions allowable under Division 30 of the ITAA 1997 cannot produce or increase a tax loss.

Tax loss amount from conversion of excess franking offsets

If the company has excess franking offsets, it must convert the excess franking offsets into an amount of tax loss to carry forward to later income years. You convert the amount of excess franking offsets into a tax loss by dividing the excess franking offsets amount by the corporate tax rate.

Write at **F** the amount of this tax loss.

Net exempt income

Write at **G** the amount of net exempt income to be taken into account in calculating the company's tax loss or carried forward tax loss.

You are required to first deduct a prior year tax loss from any net exempt income in the later income year.

If the entity has net exempt income and assessable income exceeds allowable deductions (other than the tax loss), the prior year tax loss has to be first applied against net exempt income. Only then can the entity deduct so much of the undeducted amount of the prior year tax loss (if any remains) that it chooses, subject to certain limitations - see subsections 36-17(3) and (5) of the ITAA 1997.

Conversely, if the entity has allowable deductions (other than the tax loss) that exceed assessable income, the excess deductions must be applied against net exempt income first, and then the prior year tax loss must be applied against any remaining net exempt income - see subsection 36-17(4) of the ITAA 1997.

Note: Exclude that part of net exempt income for which an amount of a tax loss could not be applied due to a deduction limit. A deduction limit can apply to the foreign loss component of a tax loss and to a transferred tax loss whose utilisation is subject to an available fraction of less than 1.

Tax losses cancelled or forgone

Write at **H** the amount of tax losses cancelled under section 719-325 of the ITAA 1997, or any losses that will not be deducted in any later income year.

A company cannot deduct a tax loss unless:

- it has the same owners and the same control throughout the period from the start of the loss year to the end of the income year, or
- it satisfies the same business test by carrying on the same business, entering into no new kinds of transactions and conducting no new kinds of business - see Subdivision 165-A of the ITAA 1997.

Tax losses deducted

Write at **I** tax losses (including convertible foreign losses) deducted during the income year under section 36-17 of the ITAA 1997.

Tax losses transferred out under subdivision 170-A

Write at **J** the amount of tax losses transferred out by the company to group companies under Subdivision 170-A of the ITAA 1997.

Total tax losses carried forward to later income years

Write at **K** the total of tax losses carried forward to later income years.

Taxpayer's declaration

If you do not lodge the schedule with the tax return, you must sign and date the schedule.

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Abbreviations

A list of abbreviations.

Last updated 30 May 2012

ABN	Australian business number
CFC	controlled foreign company
CGT	capital gains tax
Commissioner	Commissioner of Taxation
film loss	film component of tax loss
FHSA	first home savers account
head company	head company of a consolidated group as defined in the ITAA 1997
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
IT(TP)A	*Income Tax (Transitional Provisions) Act 1997*
MEC group	multiple entry consolidated group
TFN	tax file number
the schedule	*Consolidated groups losses schedule 2012*

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More information

Where you can find more information about consolidated group losses.

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On this page

Publications

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Publications

Publications referred to in these instructions

- Capital gains tax (CGT) schedule 2012 (NAT 3423)
- *Company tax return instructions 2012* (NAT 0669)
- Taxation Ruling TR 2007/2- *Income tax: application of the same business test to consolidated and MEC groups - principally, the interaction between section 165-210* and *section 701-1 of the Income Tax Assessment Act 1997*
- *Guide to capital gains tax 2012* (NAT 4151)
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Income Tax (Transitional Provisions) Act 1997*
- Market valuation for tax purposes

- Taxation Ruling TR 1999/9- *Income tax: the operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132*
- Taxation Ruling TR 2004/9- *Income tax: consolidation: what is meant by 'injection of capital' in section 707-325 of the Income Tax Assessment Act 1997?*

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Information about business income tax, fringe benefits tax (FBT), fuel tax credits (FTC), goods and services tax (GST), pay as you go (PAYG) and activity statements, including lodgment and payment, accounts and business registration (including Australian business number and tax file number), and dividend and royalty withholding tax.	

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- TTY users, phone **13 36 77**. For ATO 1800 free call numbers, phone **1800 555 677**.
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- Internet relay users, connect to the NRS at **www.relayservice.com.au**

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