Worked example

Concessional method for utilising transferred losses – consolidation part-way through income year

Description

This example shows how to apply the concessional method for utilising losses, which is available for certain losses ('concessional losses') transferred to the head company of a consolidated group during the transitional period (that is, 1 July 2002 to 30 June 2004). This method replaces the limits on utilisation that would otherwise apply under the available fraction method.

Commentary

Under section 707-350, concessional losses can be used by the head company of the group over three years, subject to it having sufficient income or gains against which those losses can be offset (and provided the relevant recoupment tests are satisfied).

Concessional losses are losses that:

- were originally made outside the group by a company (the real loss-maker) for an income year ending on or before 21 September 1999
- are transferred from the real loss-maker to the head company when the group consolidates before 1 July 2004
- are transferred because the continuity of ownership test (COT) and the control test were satisfied, and
- have not been previously transferred to a consolidated group.

The concessional method is optional and, if chosen, applies to all eligible losses in a loss bundle.

The apportionment rules in section 707-335 do not apply to the utilisation of concessional losses. Provided it has sufficient income or gains, the head company can utilise one-third of concessional losses in the first income year ending after the date of consolidation, even when the group consolidates part-way through the income year. → Taxation Determination TD 2004/90

Example

Facts

A consolidated group forms on 1 January 2003. The head company, HCo, balances at the end of each financial year (30 June). A $900 net capital loss incurred by a company in the 1997 income year is transferred to HCo because the COT and the control test are satisfied. HCo does not have any other net capital losses.

HCo has capital gains in income years as follows:

- $450 in 2003
- $250 in 2004
- $800 in 2005.

HCo does not have any capital losses in these income years.

HCo satisfies the recoupment tests for utilisation of the transferred net capital loss in each of these three income years. It chooses to use the concessional method to utilise this loss in the first year.

Calculation

The transferred net capital loss satisfies the conditions to be a concessional loss. The limits on utilising the loss are calculated below.

2003 income year

The limit on utilisation of the loss is $300, being one-third of the amount of the loss. There is no apportionment, even though the consolidated group formed six months into HCo's income year.

As HCo's capital gains are greater than this limit, it can utilise $300 of the loss in the 2003 income year.

HCo will bring to account a net capital gain of $150 for the 2003 income year.

2004 income year

The limit on utilisation of the loss is $300, being the difference between:

- two-thirds of the loss ($600), and
- the amount of $300 utilised in the 2003 income year.

Accordingly, $250 of the loss can be utilised in the 2004 income year, being the amount of HCo's capital gains for the year.

HCo has neither a net capital gain nor net capital loss for the 2004 income year.

2005 income year

The limit on utilisation of the loss is $350, being the difference between:

- the amount of the loss ($900), and
- the amounts utilised in the 2003 income year ($300) and 2004 income year ($250).

As HCo's capital gains are greater than this limit, it can utilise the remaining $350 of the loss in the 2005 income year.

HCo will bring to account a net capital gain of $450 for the 2005 income year.

References

Income Tax Assessment Act 1997, section 707-335; as amended by *New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002), Schedule 1

Income Tax (Transitional Provisions) Act 1997, section 707-350; as amended by *New Business Tax System (Consolidation) Act (No. 1) 2002* (No. 68 of 2002), Schedule 2

Explanatory Memorandum to the New Business Tax System (Consolidation) Bill (No. 1) 2002, Chapter 9

Taxation Determination TD 2004/90 – Income tax: consolidation: is there any apportionment under section 707-335 of the *Income Tax Assessment Act 1997* to the limits calculated under subsection 707-350(3) of the *Income Tax (Transitional Provisions) Act 1997* regarding the utilisation of losses?

Revision history

Section C3-4-525 first published 28 May 2003.

Further revisions are described below.

Date	Amendment	Reason
26.10.05	Reference to new taxation determination.	

Proposed changes to consolidation

Proposed changes to consolidation announced by the Government are not incorporated into the *Consolidation reference manual* until they become law. In the interim, information about such changes can be viewed at:

- **http://assistant.treasurer.gov.au** (Assistant Treasurer's press releases)
- **www.treasury.gov.au** (Treasury papers on refinements to the consolidation regime).