

BUSINESS

COMPANIES, TRUSTS AND
SUPERANNUATION FUNDS

INSTRUCTIONS

NAT 4088-6.2007

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Australian Government
Australian Taxation Office

Losses schedule instructions 2007

To help you complete the losses schedule
for 1 July 2006 – 30 June 2007



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ABOUT THESE INSTRUCTIONS

The *Losses schedule instructions 2007* will help you complete the *Losses schedule 2007*. Non-consolidated group entities (companies, trusts and superannuation funds) to which any of the tests on page 1 apply must complete a losses schedule and lodge it with their tax return.

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 schedule.

This publication is NOT a guide to income tax law. Please get help from the Tax Office or a recognised tax adviser 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 and for information about our other services, see the inside back cover.

INTRODUCTION

WHAT'S NEW

Amendments to the company loss recoupment rules

In the 2007 Budget the Government announced it will pass legislation to remove the \$100 million income cap on the same business test, with effect from 1 July 2005. The proposed legislation will also ensure that companies do not fail the continuity of ownership test because they have multiple classes of shares on issue, and ensure that the entry history rule in the consolidation regime is disregarded in applying the same business test, with effect from 1 July 2002.

WHO MUST COMPLETE A LOSSES SCHEDULE?

Do any of the following tests apply to your entity (company, trust or superannuation fund)?

If so, complete and submit a losses schedule with your 2007 tax return.

A losses schedule is required if the entity:	Company	Trust	Fund
■ has a total of tax losses and net capital losses carried forward to the 2007–08 income year greater than \$100,000	✓	✓	✓
■ is required by section 165-13 of the <i>Income Tax Assessment Act 1997</i> (ITAA) 1997 to satisfy the same business test in Subdivision 165-E of that Act to apply a loss either in the 2006–07 income year or in a later income year or, having passed the continuity of ownership test, has claimed a deduction for tax losses and/or applied net capital losses greater than \$100,000	✓		
■ is a listed widely held trust that is required by section 266-125 of Schedule 2F to the <i>Income Tax Assessment Act 1936</i> (ITAA 1936) to satisfy the same business test in Subdivision 269-F of that Schedule to deduct a tax loss in the 2006–07 or later income years or, having passed the 50% stake test, has claimed a deduction for tax losses greater than \$100,000		✓	
■ has a changeover time that occurred after 1.00pm by legal time in the Australian Capital Territory on 11 November 1999 and determined that it has an unrealised net loss as defined in the provisions of Subdivision 165-CC of the ITAA 1997	✓		
■ is a life insurance company and has either a complying superannuation class tax loss or a virtual pooled superannuation trust (PST) net capital loss carried forward to the 2007–08 income year	✓	✓	
■ claims a deduction for foreign source losses	✓	✓	✓
■ has 'current year' foreign source losses	✓	✓	✓
■ has foreign source losses carried forward to later income years	✓	✓	✓
■ claims a deduction for earlier year controlled foreign company (CFC) losses	✓	✓	✓
■ has current year CFC losses	✓	✓	✓
■ has CFC losses carried forward to later income years	✓	✓	✓

! NOTE

An entity may need to complete a losses schedule for certain aspects of its net capital losses. While some of the information requested in the losses schedule is also requested in the *Capital gains tax (CGT) schedule 2007* (NAT 3423–6. 2007) (CGT schedule), an entity that completes a losses schedule may also need to complete a CGT schedule.

If the entity completes a losses schedule in respect of any aspect of its losses, all relevant parts of the schedule must be completed. For example, if the entity completes a schedule as a result of foreign source losses and has both tax losses and net capital losses carried forward to later income years, details of such losses are required even if the total of these losses is not greater than \$100,000.

! NOTE

An entity that has joined a consolidated group as a subsidiary member during the year of income must lodge a losses schedule covering any non-membership period(s) if the entity satisfies any of the requirements for lodgment of that schedule including where losses exceed \$100,000 at the end of the non-membership period. The amounts at part A of the losses schedule are required to be transferred to **U** and **V** item **11** on the *Company tax return 2007* (NAT 0656–6.2007).

COMPLETING THE SCHEDULE

PAGE 1 OF THE SCHEDULE

TAX FILE NUMBER

Print the tax file number (TFN) of the entity.

NAME OF ENTITY

Print the name of the entity.

The name shown must be the same as that shown on the entity's tax return.

AUSTRALIAN BUSINESS NUMBER

Print the Australian business number (ABN), if any, of the entity.

SIGNATURE AS PRESCRIBED IN TAX RETURN

The person who is required to sign, and who signs, the tax return of the entity is also required to sign the losses schedule.

Meaning of 'applied' and 'unapplied' in this schedule

Unless the context indicates otherwise:

An 'unapplied' tax loss includes a tax loss for which a deduction has not yet been claimed, that has not been reduced by net exempt income or, in the case of companies, has not been transferred to other companies that are members of the same wholly owned group.

Conversely, an 'applied' tax loss includes a tax loss for which a deduction has been claimed, that has been reduced by net exempt income or, in the case of companies, has been transferred to other companies that are members of the same wholly owned group.

An 'unapplied' net capital loss includes a net capital loss which has not been applied against capital gains or, in the case of companies, has not been transferred to other companies that are members of the same wholly owned group.

Conversely, an 'applied' net capital loss includes a net capital loss which has been applied against capital gains or, in the case of companies, has been transferred to other companies that are members of the same wholly owned group.

PART A LOSSES CARRIED FORWARD TO THE 2007-08 INCOME YEAR – excludes foreign source losses and film losses

There are certain tests that must be satisfied for the entity to be able to apply a loss or to carry forward a loss to a later income year. The entity must keep a record of its losses and account for any adjustments including those made by the Tax Office. Records must be retained for at least five years from when they are prepared or from the completion of transactions to which they relate, whichever is later. To support claims for losses, records also should be retained at least until the end of the period of review for the income year in which the relevant losses are fully applied.

If required the entity must be able to demonstrate not only the balance of any losses being either claimed or carried forward but also how those losses arose.

If the entity is required to complete a losses schedule for any reason, the balance of the schedule should also be completed. For example, if the entity is claiming a deduction for foreign source losses and the total of its tax losses and net capital losses is less than \$100,000, details of those tax losses and net capital losses must be provided in part A of the losses schedule.

1 TAX LOSSES CARRIED FORWARD TO LATER INCOME YEARS

Complete **B** to **G** and **U** where appropriate; otherwise leave blank.

! NOTE

- Do not include net capital losses, foreign source losses or film losses at item **1**.
- Show net capital losses carried forward to later income years at item **2**, and foreign source losses at **Part E Foreign source losses**. Details of film losses carried forward are not required to be reported on this schedule.
- For the definition of a tax loss, see section 995-1 of the ITAA 1997.

Subject to various rules, an earlier year tax loss is deducted in a later income year in the order in which it was incurred – to the extent that it has not already been deducted – as shown by the following formulas:

(a) *Entities other than corporate tax entities*

- If the entity 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 36-15(2) of the ITAA 1997.
- If the entity has net exempt income and an excess of assessable income over total deductions – other than tax losses – first deduct the tax loss from the net exempt income, then deduct any remaining amount of tax loss from the excess assessable income. See subsection 36-15(3) of the ITAA 1997.
- If the entity 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 36-15(4) of the ITAA 1997.

(b) *Corporate tax entities*

- If the entity has no net exempt income and has an excess of assessable income over total deductions – other than tax losses – deduct from that excess as much of the tax loss as the entity chooses. The entity may choose a nil amount. See subsection 36-17(2) of the ITAA 1997.
- If the entity has net exempt income and an excess of assessable income over total deductions – other than tax losses – first deduct the tax loss from the net exempt income, then deduct from the part of the total assessable income that exceeds those deductions as much of the undeducted amount of the tax loss (if any) as the entity chooses. See subsection 36-17(3) of the ITAA 1997.
- If the entity 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. There is no choice available under this subsection.

The choice that the corporate tax entity has under subsection 36-17(2) or (3) for the later income year is subject to certain limitations – see subsection 36-17(5).

An entity's net exempt income is calculated in accordance with section 36-20 of the ITAA 1997.

This amount is not necessarily the same as the amount shown at **V Exempt income** item 7 on the *Company tax return 2007*.



For more information, see the information on:

- **R Tax losses deducted** item 7 in the *Company tax return instructions 2007*
- **F Tax losses deducted** item 9b in the *Fund income tax and regulatory return instructions 2007* (NAT 1601–6.2007)
- **C Tax losses deducted** item 22 in the *Partnership and trust tax returns instructions 2007* (NAT 2297–6.2007).



NOTE

- An earlier year tax loss may be reduced by the commercial debt forgiveness provisions of Schedule 2C of the ITAA 1936.
- Losses incurred in relation to deriving foreign income are excluded from **B** to **G** and **U**. For rules which quarantine classes of deductions and losses of earlier years incurred in producing foreign source income, see sections 79D and 160AFD of the ITAA 1936. It is important to note that the definition of foreign income deductions contained in section 160AFD excludes debt deductions, other than those attributable to an overseas permanent establishment – for example, interest and certain other expenses from the calculation of a foreign source loss. Debt deductions incurred in income years beginning on or after 1 July 2001 are therefore not subject to the foreign loss quarantining provisions. Allowable foreign losses are taken into account in the calculation of assessable foreign income for taxation purposes – see **Part E Foreign source losses** on page 15.
- Pooled development fund (PDF) tax losses are excluded from **B** to **G** and **U**. For more information on deductibility of PDF tax losses, see Division 195 of the ITAA 1997.
- Net capital losses may only be applied in accordance with Division 102 of the ITAA 1997. A CGT schedule may need to be completed. For more information, see the *Guide to capital gains tax 2007* (NAT 4151–6.2007).



For more information, see the information on **R Tax losses deducted** item 7 in the *Company tax return instructions 2007* (NAT 0669–6.2007).

Year of loss 2006–07

Show at **B** the unapplied amount of the tax loss incurred by the entity in the 2006–07 income year and carried forward to later income years under section 36-15 or section 36-17 (as applicable) of the ITAA 1997.

If there is no 2006–07 tax loss carried forward to the 2007–08 income year, leave blank.

Year of loss 2005–06

Show at **C** the unapplied amount of the tax loss incurred by the entity in the 2005–06 income year and carried forward to later income years under section 36-15 or section 36-17 (as applicable).

If no tax loss was incurred in the 2005–06 income year, or if the tax loss incurred in that year has been applied in full, leave blank.

Year of loss 2004–05

Show at **D** the unapplied amount of the tax loss incurred by the entity in the 2004–05 income year and carried forward to later income years under section 36-15 or section 36-17.

If no tax loss was incurred in the 2004–05 income year, or if the tax loss incurred in that year has been applied in full, leave blank.

Year of loss 2003–04

Show at **E** the unapplied amount of the tax loss incurred by the entity in the 2003–04 income year and carried forward to later income years under section 36-15 or section 36-17.

If no tax loss was incurred in the 2003–04 income year, or if the tax loss incurred in that year has been applied in full, leave blank.

Year of loss 2002–03

Show at **F** the unapplied amount of the tax loss incurred by the entity in the 2002–03 income year and carried forward to later income years under section 36-15 or section 36-17.

If no tax loss was incurred in the 2002–03 income year, or if the tax loss incurred in that year has been applied in full, leave blank.

Year of loss 2001–02 and earlier income years

Show at **G** the total amount of unapplied tax losses incurred by the entity in the 2001–02 and all earlier income years where those losses are available to be carried forward to later income years.

If no tax losses were incurred in the 2001–02 and all earlier income years, or if tax losses incurred in those years have been applied in full, leave blank.

Total

Show at **U** the total of tax losses carried forward to the 2007–08 income year. This amount is the total of the amounts shown at **B** to **G**.

Transfer the amount at **U** to the corresponding label on your tax return.

For more information on how this amount is calculated, see the information on **U Tax losses carried forward to later income years** item **11** in the *Company tax return instructions 2007*.

! NOTE

Examples for part A items 1 and 2:

- The examples are intended to be a guide only and represent some of the many possible methods of calculating the amount of losses available to be applied or carried forward to later income years.
- The examples apply equally to companies, trusts and funds, with the exception that trusts and funds are not able to transfer losses to other entities, nor are they able to have losses transferred to them. Furthermore, note that the transfer of losses provisions have been amended and are now limited to transfers involving an Australian branch of a foreign bank. See section 170-30 of the ITAA 1997.
- In all examples, it is assumed that the entity passes all tests, at all times, for that entity to be eligible to apply these losses.

EXAMPLE 1

A company's trading results for the 1999–2000 to 2006–07 income years and movement in the balances of its tax losses are as follows:

Year	Tax loss incurred \$	Net exempt income \$	Tax loss deducted \$	Tax loss transferred \$	Balance of tax losses \$
1999–2000	10,000				10,000
2000–01	30,000				40,000
2001–02	20,000				60,000
2002–03		1,000	2,000	4,000	53,000
2003–04		500			52,500
2004–05	6,000				58,500
2005–06	1,000	600			58,900
2006–07			5,000		53,900

The company's loss calculation sheet shows the following progressive balances of tax losses for the income years following the 1999–2000 income year as follows:

Balance of losses	2000 \$	2001 \$	2002 \$	2003 \$	2004 \$	2005 \$	2006 \$	2007 \$
2001-02 and earlier income years	10,000	40,000	60,000	53,000	52,500	52,500	52,500	47,500
2002-03								
2003-04								
2004-05						6,000	6,000	6,000
2005-06							400	400
2006-07								
TOTAL	10,000	40,000	60,000	53,000	52,500	58,500	58,900	53,900

Complete part A item **1** as follows:

Year of loss

2006-07 B .00

2005-06 **C** [] [] [] [] [] [] [] 4 0 0 .~~00~~

[illegible]

2003-04 E .00

2002-03 F .00

2001–02 and earlier income years **G** 4 7 5 0 0 .00

Total U 5 3 9 0 0 .

Transfer the amount at **U**, (\$53,900) to the corresponding label on your tax return.

EXAMPLE 2

A company's trading results for the 2000–01 to 2006–07 income years and movement in the balances of its tax losses are as follows:

Year	Tax loss incurred \$	Net exempt income \$	Tax loss deducted \$	Tax loss transferred \$	Balance of tax losses \$
2000-01	6,000	200			5,800
2001-02		1,000	1,000	2,000	1,800
2002-03	5,000			2,000	4,800
2003-04	1,000	500			5,300
2004-05			600		4,700
2005-06		100	800		3,800
2006-07	2,000				5,800

The company's loss calculation sheet shows the following progressive balances of tax losses for the income years following the 2000–01 income year as follows:

Balance of losses	2001 \$	2002 \$	2003 \$	2004 \$	2005 \$	2006 \$	2007 \$
2001-02 and earlier income years	5,800	1,800					
2002-03			4,800	4,800	4,200	3,300	3,300
2003-04				500	500	500	500
2004-05							
2005-06							
2006-07							2,000
TOTAL	5,800	1,800	4,800	5,300	4,700	3,800	5,800

Complete part A item **1** as follows:

Year of loss

2006-07 **B** [][][][][][] 2 0 0 0 .~~00~~

2005-06 C .00

[illegible][illegible]

2002-03 F [][][][][][] 3 3 0 0 .00

[illegible]

Total **U** 5 8 0 0 .00

Transfer the amount at **U**, (\$5,800) to the corresponding label on your tax return.

2 NET CAPITAL LOSSES CARRIED FORWARD TO LATER INCOME YEARS

Complete **H** to **M** and **V** where appropriate; otherwise leave blank.

All entities that are required to complete a losses schedule are also required to complete the details requested in this item if the entity has net capital losses carried forward to later income years.

The net capital losses of a company shown at **H** to **M** include any unapplied current year net capital loss calculated in accordance with Subdivision 165-CB of the ITAA 1997.

The entity may be required to complete a CGT schedule. For more information, see the *Guide to capital gains tax 2007*.

Year of loss 2006–07

Show at **H** the amount of any unapplied net capital loss made by the entity in the 2006–07 income year that can be carried forward and applied to reduce capital gains in later income years.

If there is no net capital loss from the 2006–07 income year available to be carried forward to later income years, leave blank.

Year of loss 2005–06

Show at **I** the amount of any unapplied net capital loss made by the entity in the 2005–06 income year that can be carried forward and applied to reduce capital gains in later income years.

If no net capital loss was made in the 2005–06 income year, or if the net capital loss made in that year has been applied in full, leave blank.

Year of loss 2004–05

Show at **J** the amount of any unapplied net capital loss made by the entity in the 2004–05 income year that can be carried forward and applied to reduce capital gains in later income years.

If no net capital loss was made in the 2004–05 income year, or if the net capital loss made in that year has been applied in full, leave blank.

Year of loss 2003–04

Show at **K** the amount of any unapplied net capital loss made by the entity in the 2003–04 income year that can be carried forward and applied to reduce capital gains in later income years.

If no net capital loss was made in the 2003–04 income year, or if the net capital loss made in that year has been applied in full, leave blank.

Year of loss 2002–03

Show at **L** the amount of any unapplied net capital loss made by the entity in the 2002–03 income year that can be carried forward and applied to reduce capital gains in later income years.

If no net capital loss was made in the 2002–03 income year, or if the net capital loss made in that year has been applied in full, leave blank.

Year of loss 2001–02 and earlier income years

Show at **M** the amount of any unapplied net capital losses made by the entity in the 2001–02 and earlier income years that can be carried forward and applied to reduce capital gains in later income years.

If no net capital losses were made in the 2001–02 or earlier income years, or if net capital losses made in those years have been applied in full, leave blank.

Total

Show at **V** the total of unapplied net capital losses carried forward to the 2007–08 income year at **H** to **M**.

Transfer the amount at **V** to the corresponding label on your tax return.

EXAMPLE 3

A company's results for the 2001–02 to 2006–07 income years and movement in the balances of its net capital losses are as follows:

Year	Net capital loss incurred \$	Net capital loss applied \$	Net capital loss transferred \$	Balance of net capital losses \$
2001-02	5,000			5,000
2002-03	9,000		4,000	10,000
2003-04		2,000		8,000
2004-05	8,000			16,000
2005-06		1,500		14,500
2006-07	1,000			15,500

The company's loss calculation sheet shows the following progressive balances of net capital losses for the income years following the 2001-02 income year as follows:

Year	2002	2003	2004	2005	2006	2007
2001-02	5,000	1,000				
2002-03		9,000	8,000	8,000	6,500	6,500
2003-04						
2004-05				8,000	8,000	8,000
2005-06						
2006-07						1,000
TOTALS	5,000	10,000	8,000	16,000	14,500	15,500

Complete part A item **2** as follows:

Year of loss

2006-07 H [] [] [] [] [] [] 1 0 0 0 .~~00~~

2005-06 I .00

2004-05 **J** [] [] [] [] [] [] [] 8 0 0 0 .~~00~~

[illegible][illegible]

2001-02 and earlier income years M [] [] [] [] [] [] [] [] [] [] .00

Total V 1 5 5 0 0 .~~00~~

Transfer the amount at **V**, (\$15,500), to the corresponding label on your tax return.

PAGE 2 OF THE SCHEDULE

PART B OWNERSHIP AND SAME BUSINESS TEST – company and listed widely held trust only

1 WHETHER CONTINUITY OF MAJORITY OWNERSHIP TEST PASSED

If the entity has deducted, applied (or, if applicable, transferred in or transferred out) in the 2006–07 income year a loss incurred in any of the listed years, print **X** in the appropriate boxes to indicate whether the entity has satisfied the continuity of majority ownership test in respect of that loss.

The aim of item **1** is to find out if:

- the continuity of majority ownership test at section 165-12 of the ITAA 1997 – if the entity is a company, or
- the 50% stake test at Subdivision 269-C of Schedule 2F to the ITAA 1936 – if the entity is a listed widely held trust

has been satisfied in respect of a loss if a loss in any of the periods listed at item **1** is applied by being claimed as a deduction – if the entity is a company or listed widely held trust.

Company only

A tax loss of an earlier income year is not deductible, and a net capital loss cannot be applied, unless a company has maintained the same owners as prescribed in section 165-12 of the ITAA 1997 (see also section 165-96 of the ITAA 1997 for applying net capital losses of earlier years).

For more information on the rules for arrangements affecting beneficial ownership, see section 165-180 of the ITAA 1997.

➤ For more information, see the information on **R** **Tax losses deducted** item **7** in the *Company tax return instructions 2007* (NAT 0669–6.2007).

The following conditions apply:

- Where tax losses are sought to be deducted, or net capital losses are sought to be applied, in an income year ending after 21 September 1999, majority ownership must be maintained from the start of the loss year to the end of the income year.
- There must be persons who, at all times during the ownership test period, beneficially owned (between them) shares carrying (between them) the right to:
 - exercise more than 50% of the voting power in the company
 - receive more than 50% of the company's dividends, and
 - receive more than 50% of the company's capital distributions. See sections 165-150 to 165-160 of the ITAA 1997.
- It is reasonable to assume that there are persons (none of them companies) 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 of the ITAA 1997.
- A modified version of the above rules applies to widely held companies and eligible Division 166 companies – see Division 166 of the ITAA 1997. The current version of Division 166 was introduced as part of the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005*. It replaced the former Division 166 that applied to listed public companies and their 100% subsidiaries.

If the company fails to meet a condition of section 165-12 of the ITAA 1997, the company must satisfy the conditions relating to carrying on the same business under section 165-13 of the ITAA 1997. A company will not satisfy the same business test for a recoupment year if its total income is greater than \$100 million for that year. This measure first applies to any tax loss that is incurred, and any net capital loss that is made, in an income year commencing on or after 01 July 2005.

The Government has announced that the \$100 million income cap on the same business test will be removed with effect from 1 July 2005. See **What's new** for more information.

For more information on the same business test, see *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 165-32*.

! NOTE

- Even if the company satisfies the ownership tests of section 165-12 of the ITAA 1997 or if not, then the same business test of section 165-13 of the ITAA 1997, it cannot deduct earlier income year tax losses unless it satisfies the control test at section 165-15 of the ITAA 1997.
- Anti-avoidance provisions are at Subdivisions 175-A and 175-B of the ITAA 1997.

➤ For more information, see the information on **R** **Tax losses deducted** item **7** in the *Company tax return 2007 instructions* (NAT 0669–6.2007).

Listed widely held trust only

A tax loss for a listed widely held trust may not be deductible if abnormal trading in the units of the trust has occurred during the period from the beginning of the loss year until the end of the income year. Abnormal trading is defined in Subdivision 269-B of Schedule 2F to the ITAA 1936. If abnormal trading has occurred the trust must meet the 50% stake test in Subdivision 269-C of Schedule 2F to the ITAA 1936. If the trust cannot meet the 50% stake test it must satisfy the same business test in Subdivision 269-F of Schedule 2F to the ITAA 1936.

! NOTE

If deductions for bad debts are involved, then section 266-135 of the ITAA 1936 may apply.

Completing item 1 of part B

Print **X** in the **Yes** boxes at **A** to **F** (as applicable) if, during the 2006–07 income year, the entity seeks to utilise a loss of the relevant year and the entity has passed:

- the continuity of majority ownership test – if the entity is a company, or
- the 50% stake test – if the entity is a listed widely held trust in respect of the loss of that particular year.

Print **X** in the **No** boxes at **A** to **F** (as applicable) for each year in respect of which the entity seeks to deduct a loss if the continuity of majority ownership test or the 50% stake test – as applicable – has not been satisfied in respect of that loss and the entity is required to satisfy the same business test.

If there was no loss deducted (or, if applicable, not transferred in or transferred out) in respect of a particular year, leave the boxes next to that year blank.

! NOTE

Examples for part B item 1

Although examples 4–6 are for companies, the examples, notes and comments apply equally to listed widely held trusts – which must satisfy the 50% stake test.

EXAMPLE 4

A company had incurred tax losses in earlier income years. The company deducted all of these tax losses in respect of the 2006–07 income year. At the beginning of the 2006–07 income year, the company had undeducted losses from the 2001–02, 2003–04, 2004–05 and 2005–06 income years. The continuity of majority ownership test was failed during the 2003–04 income year, but all other tests for allowing the tax losses to be applied have been passed by the company.

On these facts, for the tax losses of the 2003–04 income year and earlier income years, the company has not passed the continuity of majority ownership test.

Complete part B item 1 as follows:

Year of loss				
2006–07	A Yes	<input type="checkbox"/>	No	<input type="checkbox"/> Print X in the appropriate box.
2005–06	B Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/> Print X in the appropriate box.
2004–05	C Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/> Print X in the appropriate box.
2003–04	D Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/> Print X in the appropriate box.
2002–03	E Yes	<input type="checkbox"/>	No	<input type="checkbox"/> Print X in the appropriate box.
2001–02 and earlier income years	F Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/> Print X in the appropriate box.

The above example shows that:

- there was no deduction for a tax loss incurred in the 2002–03 income year
- the company passed the continuity of majority ownership test for the tax losses of the 2004–05 and 2005–06 income years
- the company failed the continuity of majority ownership test for the tax losses of the 2001–02 and the 2003–04 income years.

EXAMPLE 5

An entity – company or listed widely held trust – that has satisfied the continuity of majority ownership test or the 50% stake test (as applicable) applies, in the 2006–07 income year, a tax loss incurred in the 2001–02 income year.

Print **X** in the **Yes** box at **F** 2001–02 and earlier income years.

EXAMPLE 6

A company that incurred a tax loss in the 2001–02 income year subsequently undergoes a change in majority ownership in the 2002–03 income year. The company satisfies the same business test in respect of the 2001–02 tax loss.

The company incurs a further tax loss in the 2003–04 income year and satisfies the continuity of majority ownership test in respect of this 2003–04 tax loss.

In the 2006–07 income year the company deducts the tax losses incurred in the 2001–02 and 2003–04 income years.

Print **X** in the **Yes** box at **D** 2003–04 and **X** in the **No** box at **F** 2001–02 and earlier income years.

2 AMOUNT OF LOSSES DEDUCTED FOR WHICH THE CONTINUITY OF MAJORITY OWNERSHIP TEST IS NOT PASSED BUT THE SAME BUSINESS TEST IS SATISFIED – excludes foreign source losses and film losses

Show at item 2 the total amount of losses applied during the 2006–07 income year – if the entity is either a company or a listed widely held trust – and for which the same business test must be satisfied.

! NOTE

In addition to those companies with either tax losses or net capital losses that have not passed the continuity of majority ownership test, this item also applies to listed widely held trusts with tax losses that have not passed the 50% stake test.

Same business test: company and listed widely held trust

Company

Under the same business test, the company must carry on the same business throughout the income year that it carried on immediately before the disqualifying change of ownership. The test is not satisfied if at any time during the income year the relevant entity did not carry on the same business as it did immediately before the change in the ownership of the entity or it derives assessable income from:

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

‘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. But, 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.

A company will not satisfy the same business test for a recoupment year if its total income is greater than \$100 million for that year. This measure first applies to any tax loss that is incurred, and any net capital loss that is made, in an income year commencing on or after 1 July 2005.

The Government has announced that the \$100 million income cap on the same business test will be removed with effect from 1 July 2005. See **What's new** for more information.

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

Listed widely held trust

A listed widely held trust must carry on the same business as it carried on before the first abnormal trading in its units – that caused the failure of the 50% stake test – occurred.

For application of the same business test for a listed widely held trust, see **Company** above.

For more information, see section 266-125 and Subdivision 269-F of Schedule 2F to the ITAA 1936.

The principles outlined in Taxation Ruling TR 1999/9 may be of assistance.

Tax losses

Show at **G** the amount of tax losses deducted by the entity that do not meet the continuity of majority ownership test but satisfy the same business test.

Net capital losses

Show at **H** the amount of net capital losses applied by a company that do not meet the continuity of majority ownership test but satisfy the same business test.

EXAMPLE 7

A company had the following losses:

Year	Tax loss \$	Net capital loss \$
2000–01	1,000	
2001–02	2,000	
2002–03		500
2003–04	1,600	800
2004–05		
2005–06	10,000	2,000
2006–07		
TOTALS	14,600	3,300

There was a change in the underlying beneficial ownership of the company in the 2004–05 income year.

The company passed the same business test and all other tests in relation to the losses incurred prior to that year and passed the continuity of majority ownership test and all other tests in relation to the 2005–06 losses.

Tax losses

All tax losses incurred in the 2000–01, 2001–02 and 2003–04 income years were deducted in the 2006–07 income year, as well as \$6,000 of the 2005–06 tax loss.

Net capital losses

All of the 2002–03 net capital loss and \$600 of the 2003–04 net capital loss were applied in the 2006–07 income year.

Of all of the above losses, which are being applied in the 2006–07 income year, those which are subject to the same business test being satisfied by the company are as follows:

Tax losses

Year	Amount \$
2000–01	1,000
2001–02	2,000
2003–04	1,600
TOTAL	4,600

4 DO CURRENT YEAR LOSS PROVISIONS APPLY?

Is the company required to calculate its taxable income or tax loss for the year under Subdivision 165-B or its net capital gain or net capital loss for the year under Subdivision 165-CB of the ITAA 1997?

A company is required to calculate its taxable income and tax loss under Subdivision 165-B of the ITAA 1997 where it does not satisfy the continuity of majority ownership test for the whole income year. See section 165-35 of the ITAA 1997. The current year loss provisions also apply where, during the income year, a person begins to control, or becomes able to control, the voting power in the company for the purpose or one of the purposes of gaining an advantage under the ITAA 1997 or gaining such a benefit for someone else. See section 165-40 of the ITAA 1997.

However, the current year loss rules do not apply in either case if the same business test is satisfied. A company will not satisfy the same business test for the whole or a part of an income year if its total income is greater than \$100 million for that year.

If the current year loss provisions apply, the company calculates its taxable income and tax loss by dividing the income year into periods according to when the change in ownership or control took place. Each separate period is regarded as an income year, with a notional tax loss or notional taxable income calculated for each separate period.

The company's tax loss for the income year – see section 165-70 of the ITAA 1997 – consists of the total of notional losses calculated under section 165-50 or 165-75 of the ITAA 1997.

The current year loss rules in Subdivision 165-CB of the ITAA 1997, where applicable, determine the company's net capital gain and net capital loss for the income year. If the company is required to calculate its taxable income and tax loss for the income year under Subdivision 165-B of the ITAA 1997 then Subdivision 165-CB will automatically apply – see section 165-102 of the ITAA 1997. The company works out its net capital gain and net capital loss by dividing the income year into periods according to when the change in ownership or control took place.

A notional net capital gain or notional net capital loss is calculated for each period.

A company's net capital loss for the income year – see section 165-114 of the ITAA 1997 – consists of the total of notional net capital losses calculated under section 165-108 of the ITAA 1997.

Print **X** in the **Yes** box at **K** if the company is required to calculate its taxable income or tax loss under the provisions of Subdivision 165-B or its net capital gain or net capital loss under the provisions of Subdivision 165-CB.

Print **X** in the **No** box at **K** if the company is not required to calculate its taxable income or tax loss under the provisions of Subdivision 165-B or its net capital gain or net capital loss under the provisions of Subdivision 165-CB.

PART C UNREALISED LOSSES – company only

Has a changeover time occurred in relation to the company after 1.00pm by legal time in the Australian Capital Territory on 11 November 1999?

A changeover time is the time of a change in majority ownership or in the control of a company.

To determine whether a company has failed the continuity of majority ownership test or the change of control test for the purposes of Subdivision 165-CC of the ITAA 1997, see:

- section 165-115C – change in ownership of company
- section 165-115D – change in control of company.

In determining whether there has been a change of ownership or control at a particular test time, the ownership or control profile is determined at two points in time – the reference time and the test time.

For this purpose, the reference (base) time is the later of 1.00pm (by legal time in the Australian Capital Territory) on 11 November 1999 (the commencement time) for a company in existence at that time (or the time when it came into existence if not), and the time immediately after the last preceding changeover time, if any.

The continuity of majority ownership test is subject to the 'same share and interest' rule in section 165-165 of the ITAA 1997. This requires – subject to special rules for share and unit 'splits' or 'consolidations' – that exactly the same shares must continue to be held by the same persons throughout the 'test period' – that is, from reference time to test time – to count towards satisfaction of the test. Other interests in the company – for example, shares in another company – must be exactly the same interests and beneficially owned by the same persons.

There is a 'saving rule' in section 165-115C of the ITAA 1997 which provides that if the continuity of majority ownership test would have been satisfied but for the operation of the 'same share and interest rule', the test time is not a changeover time if the company has information from which it is reasonable to conclude that less than 50% of the company's unrealised net loss has been or will be duplicated as a result of any CGT event that happened during the test period.

Subdivision 166-CA of Division 166 of the ITAA 1997 modifies the way in which Subdivision 165-CC of the ITAA 1997 applies to a widely held company or eligible Division 166 company.

If the answer is yes, print **X** in the **Yes** box at **L**, and complete **M**.

If the answer is no, print **X** in the **No** box at **L**, and do not complete **M**, **N** or **O**.

At the changeover time did the company satisfy the maximum net asset value test under section 152-15 of the ITAA 1997?

Any company that has a net value of CGT assets of \$5 million or less, as determined under section 152-15 of the ITAA 1997, at the time it failed the continuity of

majority ownership test, is not subject to the operation of Subdivision 165-CC of the ITAA 1997. The maximum threshold amount of \$5 million includes the net value of the CGT assets of the company and any entity connected or affiliated with the company as referred to in section 152-15 of the ITAA 1997.

If the answer is yes, print **X** in the **Yes** box at **M**, and do not complete **N** and **O**.

If the answer is no, print **X** in the **No** box at **M**, and complete **N**.

! NOTE

If a company has failed the continuity of majority ownership test on two or more occasions since the commencement time, complete **M** in respect of the latest changeover time.

If you printed X in the No box at M, has the company determined it had an unrealised net loss at the changeover time?

Where a company that answered yes at **L** and no at **M** has an unrealised net loss at the changeover time, the company cannot, to the extent of the unrealised net loss, have capital losses taken into account, or deduct revenue losses, in respect of CGT events that happen to CGT assets owned at the changeover time unless the company satisfies the same business test. Companies whose total income for an income year is more than \$100 million cannot satisfy the same business test for that year. The question whether a company has an unrealised net loss at the time of the change is determined in accordance with the method statement in section 165-115E of the ITAA 1997.

The Government has announced that the \$100 million income cap on the same business test will be removed with effect from 1 July 2005. See **What's new** for more information.

If the answer is yes, print **X** in the **Yes** box at **N**, and complete **O**.

If the answer is no, print **X** in the **No** box at **N**, and do not complete **O**.

! NOTE

If a company has failed the continuity of majority ownership test on two or more occasions since the commencement time, complete **N** in respect of the latest changeover time. Subdivision 165-CC of the ITAA 1997 requires a company to determine whether it has an unrealised net loss each time that it experiences a changeover time.

If you printed X in the Yes box at N, what was the amount of unrealised net loss calculated under section 165-115E of the ITAA 1997?

! NOTE

Subdivision 165-CC of the ITAA 1997 does not specify when a company has to calculate whether it has an unrealised net loss. However, this calculation must be done before claiming any loss or deduction on an asset that was held at the changeover time. Where no calculation has been undertaken as at the date of lodging the company's income tax return, print **X** in the **No** box at **N**, and do not complete **O**.

An unrealised net loss is, broadly, the excess of the company's unrealised losses on assets over unrealised gains on assets at the changeover time. This is determined by deeming such assets to be disposed of at market value at the changeover time. A company may choose to exclude every asset that it acquired for less than \$10,000 from the calculation of the amount. A company may also choose to use the written down value of depreciable plant – not a building or structure – at the changeover time rather than its market value at that time provided the expenditure incurred by the company to acquire the plant was less than \$1 million and it would be reasonable for the company to conclude that the market value of the plant at the changeover time was not less than 80% of its written down value at that time.

The question whether a company has an unrealised net loss at a changeover time is calculated using the steps in the method statement below.

Method statement

Step 1

Calculate, in respect of each CGT asset that the company owned at the changeover time, any:

- notional capital gain or notional revenue gain
- notional capital loss or notional revenue loss in respect of the asset at that time.

! NOTE

The notional calculation is made on the assumption that the company disposed of the asset at its market value at the changeover time. For an asset that is an item of trading stock, if the item's market value at the changeover time:

- exceeded the latest valuation under Division 70 of the ITAA 1997, or
 - the cost of the item at the changeover time – if there is no valuation under Division 70,
- the company has a notional revenue gain equal to the excess.

If the item's market value at the changeover time was less than the latest valuation under Division 70 or the cost of the item at the changeover time – if there is no valuation under Division 70 – the company has a notional revenue loss equal to the difference.

Step 2

Add up the sum of the company's notional capital gains and the sum of the company's notional revenue gains. The total is the unrealised gross gain at the changeover time.

Step 3

Add up the sum of the company's notional capital losses and the sum of the company's notional revenue losses. The total is the unrealised gross loss at the changeover time.

Step 4

If the unrealised gross loss at the changeover time exceeds the unrealised gross gain at that time, the excess is the company's preliminary unrealised net loss.

Step 5

Add up the company's preliminary unrealised net loss and any capital loss or deduction disregarded under Subdivision 170-D of the ITAA 1997. The total is the company's unrealised net loss.

Show at **Q** the amount of unrealised net loss the company has at the changeover time.

Print zero (0) at **Q** if the company has an unrealised net gain at the changeover time.

! NOTE

The Commissioner of Taxation may give advice about methods to be used, and other things to be done, in valuing assets for the purposes of Subdivision 165-CC of the ITAA 1997.

PART D LIFE INSURANCE COMPANIES

Only those companies that carry on the business of life insurance and that have complying superannuation class tax losses or virtual PST net capital losses carried forward to later income years complete part D of the losses schedule.

Complying superannuation class tax losses carried forward to later income years

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

- the complying superannuation assessable income for that income year, and
- net exempt income for the income year that is attributable to the virtual PST assets.

Show at **P** the amount of complying superannuation class tax losses carried forward to later income years.

Virtual PST net capital losses carried forward to later income years

The complying superannuation class of a life insurance company has a net capital loss for the income year if the total of all capital gains made from virtual PST assets during the income year is less than the total of all the capital losses made from virtual PST assets during the income year.

Show at **Q** the amount of virtual PST net capital losses carried forward to later income years.

PAGE 3 OF THE SCHEDULE

PART E FOREIGN SOURCE LOSSES

A foreign loss incurred by a taxpayer in an income year, in respect of a class of 'assessable foreign income', can only be used to reduce income of the same class in a later income year. These losses cannot be used to reduce income in the other classes or to offset Australian source income.

! NOTE

For income years beginning on or after 1 July 2001 the calculation of foreign losses excludes debt deductions (except those that are attributable to an overseas permanent establishment). These debt deductions can be applied against Australian source income.

Broadly, assessable foreign income means:

- foreign income that is included in assessable income for an income year, and
- profits or gains of a capital nature from sources in a foreign country that are assessable other than under the CGT provisions.

The excess loss for a class of assessable foreign income may be carried forward indefinitely and used to reduce a later year's assessable foreign income for that class.

! NOTE

The provisions of Division 170 of the ITAA 1997 do not allow foreign source losses to be transferred.

Calculation of a foreign loss

The amount of the foreign loss is calculated as follows:

- Where no assessable foreign income was derived for a class during the income year, the foreign loss is equal to the total 'foreign income deductions' for that class.
- Where assessable foreign income was derived for a class during the income year, the foreign loss is equal to the excess of 'foreign income deductions' for that class over the assessable foreign income.

A foreign income deduction, in relation to a class of assessable foreign income, is any deduction that is allowed or allowable from assessable income in an income year to the extent that the deduction relates to the assessable foreign income of that class other than:

- certain losses relating to foreign investment funds, and
- debt deductions as defined in section 820–40 of the ITAA 1997 (except those debt deductions that are attributable to an overseas permanent establishment).

Capital losses are not included under any of the classes of assessable foreign income, but are included under the CGT provisions.

Debt deductions – for example, interest expense incurred in deriving assessable foreign income – can be claimed against Australian source income and are no longer quarantined to particular classes of assessable foreign

income. This means that they are not included in the calculation of a foreign loss. All other deductions, including debt deductions that are attributable to an overseas permanent establishment, are quarantined to particular classes of assessable foreign income. Therefore, these deductions must be included in calculating a foreign loss.

Classes of assessable foreign income

Assessable foreign income is divided into four classes:

- Interest income, including payments in the nature of interest.

Excluded are:

- interest that is received in the active conduct of a trade or business – for example, interest on receivables
- interest derived from money lending – for example, a banking business
- interest that falls in the offshore banking income class
- return on an equity interest in a company.

- Modified passive income is passive income other than amounts that fall within the interest class, offshore banking income class, or from an asset held in connection with an actively carried on insurance business.

Included are:

- rent
- royalties
- dividends
- annuities
- capital gains – but not capital gains under the CGT provisions
- amounts derived from the assignment of, for example, designs, patents or trade marks
- passive commodity gains.

- Offshore banking income is certain income derived through an offshore banking unit.

Included are:

- interest, fees and commissions derived in respect of offshore banking transfers
- dividends paid out of profits derived from the making of offshore banking transfers.

- All other assessable foreign income comprising amounts that do not fall within the other classes.

EXAMPLE 9

A company, in the 2006–07 income year, derives:

- modified passive income of \$1,000.

During the year the company incurs the following expenses in relation to the modified passive income:

- foreign income deductions of \$1,200
- debt deductions of \$600 (that are not attributable to an overseas permanent establishment).

The amount of current year foreign loss in relation to the modified passive class of income is \$200. That \$200 foreign loss is available to be offset against modified passive income in future years.

The debt deductions of \$600 are not included in the calculation of the current year foreign loss, and are allowed to be claimed in the current year against any other domestic income.

The calculation of prior year foreign source losses is not affected by the changes to the foreign income deduction definition.

1 PRIOR YEAR FOREIGN SOURCE LOSSES DEDUCTED – excludes losses of CFCs

Show at **A**, **B**, **C** and **D** the amount of the foreign source loss, if any, that has been claimed as a deduction for each of the four classes of income during the 2006–07 income year.

If the entity has a current year foreign source loss for a particular class of income, do not show this loss at item 1 – see item 2 below.

2 CURRENT YEAR FOREIGN SOURCE LOSSES – excludes losses of CFCs

Show at **E**, **F**, **G** and **H** the amount of current year foreign source loss, if any, relating to each of the four classes of income during the 2006–07 income year.

If the entity has claimed a deduction for a prior year foreign source loss for a particular class of income during the 2006–07 income year, do not show this loss at item 2 – see item 1 above.

3 FOREIGN SOURCE LOSSES CARRIED FORWARD – excludes losses of CFCs

Show at **I**, **J**, **K** and **L** the amount of foreign source loss, if any, relating to each of the four classes of income during the 2006–07 income year that is available to be carried forward to later income years.

4 CONTROLLED FOREIGN COMPANY (CFC) LOSSES

If the entity has an attribution interest in one or more CFCs with losses brought forward from statutory accounting periods that end within prior income years, or losses from statutory accounting periods that end within the 2006–07 income year, show these amounts at item 4.

For modifications relating to losses of a CFC see sections 424 to 431 of the ITAA 1936. For information on how to calculate the loss of a CFC, see the *Foreign income return form guide* (NAT 1840–6.2007), available on our website.

The amounts shown at **M**, **N** and **O** are the totals of the entity's share of losses of 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.

Prior year CFC losses deducted

Show at **M** the total of the entity's share of losses of CFCs, if any, from statutory accounting periods that end within prior income years, that have been claimed as notional allowable deductions for statutory accounting periods that end within the 2006–07 income year.

Current year CFC losses

Show at **N** the total amount of the entity's share of losses of CFCs, if any, from statutory accounting periods that end within the 2006–07 income year.

CFC losses carried forward

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

ABBREVIATIONS

ABN	Australian business number
CGT	capital gains tax
CFC	controlled foreign company
film loss	film component of tax loss
ITAA	Income Tax Assessment Act
PDF	pooled development fund
PST	pooled superannuation trust
TFN	tax file number

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MORE INFORMATION

INTERNET

- For general tax information and to download publications and rulings, visit **www.ato.gov.au**

PUBLICATIONS

Publications referred to in these instructions

- *Capital gains tax (CGT) schedule 2007* (NAT 3423–6. 2007)
- *Company tax return 2007* (NAT 0656–6.2007)
- *Company tax return instructions 2007* (NAT 0669–6.2007)
- *Foreign income return form guide* (NAT 1840–6.2007)
- *Fund income tax and regulatory return instructions 2007* (NAT 1601–6.2007)
- *Guide to capital gains tax 2007* (NAT 4151–6.2007)
- *Income Tax Assessment Act 1936* (ITAA 1936)
- *Income Tax Assessment Act 1997* (ITAA 1997)
- *Partnership and trust tax returns instructions 2007* (NAT 2297–6.2007)
- *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005*
- *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 165-32*

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OTHER SERVICES

- **Translating and Interpreting Service** **13 14 50**

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service for help with your call.

- **Hearing or speech impairment**

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National Relay Service:

- If you are a TTY or modem user, phone **13 36 77** and ask for the number you want. For 1800 free call numbers, phone **1800 555 677** and ask for the number you want.
- If you are a voice-only (speak and listen) user, phone **1300 555 727** and ask for the number you want. For 1800 free call numbers, phone **1800 555 727** and ask for the number you want.

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Losses schedule instructions 2007