

Worked example

Transferred loss utilisation using value donor concession with transferred foreign losses

Description This example shows how to determine, under the available fraction method, the limits for utilisation of losses transferred to the head company of a consolidated group. It also shows how the value donor concession is applied and how to treat foreign losses.

Note

For more information about:

- loss bundles and calculating the available fraction → 'Treatment of losses', C3-1; 'Consolidation loss provisions', C3-2-110 (high-level worked example)
- working out modified market value → 'Modified market value of a single joining entity', C3-4-110 (worked example)
- market values → 'Market valuation guidelines', C4-1
- the value donor concession → 'Adding to modified market value to reflect loss transferability', C3-4-210

Commentary The available fraction for a loss bundle is applied to each category of group income or gains as reduced by any relevant deductions, including group losses (that is, losses generated by the consolidated group as opposed to transferred losses). The results are taken to be the head company's only income or gains of each type. Based on that assumption, the head company works out the maximum amount of losses of each sort it can use from the loss bundle.

Under the transitional value donor concession, a loss entity (the 'real loss-maker'), in calculating its available fraction, may add to its modified market value the modified market value of another company (the 'value donor'). This concession is set out in Subdivision 707-C of the *Income Tax (Transitional Provisions) Act 1997*.

This value donor concession has effect for working out the available fraction of a bundle of losses only so far as it affects the utilisation of a tax loss, film loss or net capital loss. It does not affect the utilisation of an overall foreign loss. The available fraction for a foreign loss in either the real loss-maker's bundle or the value donor's bundle is unaffected. This means the available fractions for the real loss-maker's and value donor's foreign losses are what they would have been had value not been donated.

Example

Facts Assume the consolidated group structure as at the joining time (1 July 2002) as shown in figure 1.

ACo and BCo have been wholly owned by HCo since incorporation – both ACo and BCo are eligible to transfer tax losses to HCo under Division 170 group loss transfer provisions. The group's transferred losses are shown in table 1.

The consolidated group is working out its taxable income for the 2003 income year. Its income and gains for 2003 are shown in table 2.

Figure 1: Consolidated group at joining time (1 July 2002)

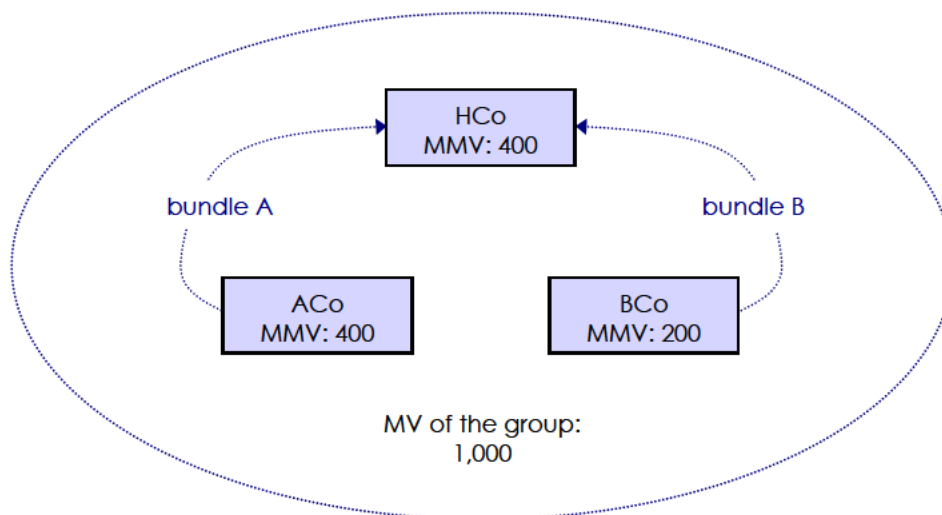


Table 1: Transferred losses

Loss bundle	Amount (\$)	Sort
A	1,000	Tax loss (not film)
	300	Foreign loss
B	500	Tax loss (not film)
	200	Foreign loss

Table 2: Group income and gains for 2003 income year

Income/gains	Amount (\$)
Assessable foreign income	600 (deductions are nil)
Other assessable income	1,000 (deductions are nil)

Both of the transferred foreign losses are in respect of the same class of assessable foreign income that was derived in the 2003 income year.

All the transferred losses are to be utilised using the available fraction method.

The head company satisfies the recoupment tests for the utilisation of all the transferred losses.

Under the value donor concession, HCo chooses to:

- (a) add 50% of HCo's modified market value to ACo in calculating the available fraction for ACo's loss bundle; and
- (b) add 50% of HCo's modified market value to BCo in calculating the available fraction for BCo's loss bundle.

Assume that, where applicable, HCo makes an election under section 79DA of the *ITAA 1936* to deduct transferred tax losses against assessable foreign income.

Note

This example is designed to illustrate how to determine the limits on utilisation of transferred losses using the available fraction method and calculation of the actual taxable income for the group. The choices made by HCo here are not purported to represent the best outcome for the group in every case where similar scenarios may exist.

Calculation 1. Applying the value donor concession

Adding modified market value to ACo:

- ACo's transferred losses (not foreign loss) are transferable to HCo. 50% of HCo's modified market value is added to ACo's.
- As a result, ACo's available fraction (AF) is:

$$(400 + [0.5 \times 400]) \div 1,000 = 0.6$$

Adding modified market value to BCo:

- BCo's transferred losses (not foreign loss) are transferable to HCo. 50% of HCo's modified market value is added to BCo's.
- As a result, BCo's available fraction (AF) is:

$$(200 + [0.5 \times 400]) \div 1,000 = 0.4$$

In determining the limit for utilising transferred losses, other than foreign losses, the available fractions to be used are 0.6 for bundle A and 0.4 for bundle B. In this example there are only transferred tax losses that have limits determined using these available fractions.

The available fractions to be used to determine the limit for utilising transferred foreign losses are determined on the basis that the modified market value is not donated. These available fractions are 0.4 for bundle A (i.e. 400/1,000) and 0.2 for bundle B (i.e. 200/1,000).

2. Determine limits for utilisation of transferred tax losses

Step 1: Work out the categories of group income or gains – subsection 707-310(3)

Table 3: Categories of group income or gains (step 1)

Column 1 Income or gains	Gross amount	Less: allowable deductions/ reductions	Less: group/ concessional losses of that kind	Column 2 Income/ gains available for bundle
Assessable foreign income	\$600	–	–	\$600
Other assessable income	\$1,000	–	–	\$1,000

Step 2: Calculate the fraction of the income/gains that is attributable to each bundle – subsection 707-310(3)

Table 4: Fraction of income/gains attributable to each bundle (step 2)

Column 1 income or gains	Loss bundle	Column 2 income/gains available for bundle	Multiplied by: available fraction (AF)	AF amount for the bundle
Assessable foreign income	Bundle A	\$600	0.6	\$360
	Bundle B	\$600	0.4	\$240
Other assessable income	Bundle A	\$1,000	0.6	\$600
	Bundle B	\$1,000	0.4	\$400

Step 3(a): Work out a notional taxable income for bundle A – subsection 707-310(2)

Table 5: Assessable foreign income (step 3a)

Foreign income	\$	Losses applied	\$
Assessable foreign income	360	Transferred foreign loss	300
Total	360	Total	300

The (notional) assessable foreign income is \$60 (\$360 – \$300).

Table 6: Taxable income (step 3a)

Assessable income	\$	Deductions	\$
Assessable foreign income	60	Transferred tax loss	660
Other assessable income	600		
Total	660	Total	660

The notional taxable income is nil (\$660 – \$660).

The utilisation of bundle A’s transferred tax loss in step 3 in determining the relevant notional taxable income is as follows:

- transferred tax loss \$660

This is the limit for utilisation of this transferred loss when determining the actual taxable income for the group.

Step 3(b): Work out a notional taxable income for bundle B – subsection 707-310(2)

Table 7: Assessable foreign income (step 3b)

Foreign income	\$	Losses applied	\$
Assessable foreign income	240	Transferred foreign loss	200
Total	240	Total	200

The (notional) assessable foreign income is \$40 (\$240 – \$200)

Table 8: Taxable income (step 3b)

Assessable income	\$	Deductions	\$
Assessable foreign income	40	Transferred tax loss	440
Other assessable income	400		
Total	440	Total	440

The (notional) taxable income is nil (\$440 – \$440)

The utilisation of bundle B’s transferred tax loss in step 3 in determining the relevant notional taxable income is as follows:

- transferred tax loss \$440

This is the limit for utilisation of this transferred loss when determining the actual taxable income for the group.

3. Determine limits for utilisation of transferred foreign losses

Step 1: Work out the categories of group income or gains – subsection 707-310(3)

Table 9: Categories of group income or gains (step 1)

Column 1 income or gains	Gross amount	Less: allowable deductions/ reductions	Less: group/ concessional losses of that kind	Column 2 income/ gains available for bundle
Assessable foreign income	\$600	–	–	\$600
Other assessable income	\$1,000	–	–	\$1,000

Step 2: Calculate the fraction of the income/gains that is attributable to each bundle – subsection 707-310(3)

Table 10: Fraction of income/gains attributable to each bundle (step 2)

Column 1 income or gains	Loss bundle	Column 2 income/gains available for bundle	Multiplied by: available fraction (AF)	AF amount for the bundle
Assessable foreign income	Bundle A	\$600	0.4	\$240
	Bundle B	\$600	0.2	\$120
Other assessable income	Bundle A	\$1,000	0.4	\$400
	Bundle B	\$1,000	0.2	\$200

Step 3(a): Work out a notional taxable income for bundle A – subsection 707-310(2)

Table 11: Assessable foreign income (step 3a)

Foreign income	\$	Losses applied	\$
Assessable foreign income	240	Transferred foreign loss	240
Total	240	Total	240

The (notional) assessable foreign income is nil (\$240 – \$240).

The calculation of notional taxable income is not necessary in this instance because foreign losses can only be utilised against assessable foreign income.

The utilisation of bundle A's transferred foreign loss in step 3 is as follows:

- transferred foreign loss \$240

This is the limit for utilisation of this transferred loss when determining the actual taxable income for the group.

Step 3(b): Work out a notional taxable income for bundle B – subsection 707-310(2)

Table 12: Assessable foreign income (step 3b)

Foreign income	\$	Losses applied	\$
Assessable foreign income	120	Transferred foreign loss	120
Total	120	Total	120

The (notional) assessable foreign income is nil (\$120 – \$120).

The calculation of notional taxable income is not necessary in this instance because foreign losses can only be utilised against assessable foreign income.

The utilisation of bundle B's transferred foreign loss in step 3 is as follows:

- transferred foreign loss \$120

This is the limit for utilisation of this transferred loss when determining the actual taxable income for the group.

4. Determine group's actual taxable income

Table 13: Assessable foreign income

Foreign income	\$	Losses applied	\$
Assessable foreign income	600	Transferred foreign loss (bundle A)	240
		Transferred foreign loss (bundle B)	120
Total	600	Total	360

The group's assessable foreign income is \$240 (\$600 – \$360).

Table 14: Taxable income

Assessable income	\$	Deductions	\$
Assessable foreign income	240		
Other assessable income	1,000	Transferred tax loss – bundle A	660
		Transferred tax loss – bundle B	440
Total	1,240	Total	1,100

The group's taxable income is \$140 (\$1,240 – \$1,100).

Transferred losses that are carried forward are:

- transferred foreign loss (bundle A) \$60
- transferred foreign loss (bundle B) \$80
- transferred tax loss (bundle A) \$340
- transferred tax loss (bundle B) \$60

References

Income Tax Assessment Act 1997, Division 170

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

Income Tax (Transitional Provisions) Act 1997, Subdivision 707-C; 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, Chapters 8 and 9