


TD 93/D240 - Income tax: does subsection 80A(1) require an unbroken compliance for the continuity of ownership test?

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This document has been finalised by TD 94/38.

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Draft Taxation Determination

Income tax: does subsection 80A(1) require an unbroken compliance for the continuity of ownership test?

1. No. Subsection 80A(1) requires that there is sufficient identity in beneficial ownership of shares in the year of loss and the year of income. There is no specific requirement that the beneficial ownership continues unbroken from the year of loss to the year of income : see the remarks of Mason J. in *FC of T v Kolotex Hosiery* (1972-73) 130 CLR 64; 73 ATC 4094; (1973) 4 ATR 24.

Example:

During the year ended 30 June 1990, Company X incurred a loss. Its shares (all of one class) were more than 50% beneficially owned by A & B. During the income year ended 30 June 1991 C & D acquired all the shares of Company X. Subsequently A & B reacquired a greater than 50% beneficial shareholding in Company X on 30 June 1991 and retained their shareholding to 30 June 1992.

The continuity of ownership test is satisfied in the income year ended 30 June 1992. A & B together beneficially owned more than 50% of the shares in Company X in the year of loss and in the year of income.

Commissioner of Taxation
23/9/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Losses; Continuity of Ownership;

Legislative Ref: ITAA 80A(1)

Case Ref: FCT v Kolotex Hosiery (1972-73) 130 CLR 64; 73 ATC 4094; (1973) 4 ATR 24

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