

# ***IT 118 - Losses - prior years - company - section 80E***



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TAXATION RULING NO. IT 118

LOSSES - PRIOR YEARS - COMPANY-SECTION 80E

F.O.I. EMBARGO: May be released

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PRIOR YEAR LOSSES  
COMPANIES  
SAME BUSINESS

80E(1)(c)

80E(1)(d)

PREAMBLE

A question was considered concerning the application of section 80E in the following circumstances.

2. The taxpayer company was incorporated in Australia in 1961 and carried on business as a supplier of petroleum products. Ninety-five per cent of its issued capital was held by an oil company incorporated in the U.S.A. and the remaining five per cent was held by members of the Australian public.

3. The whole of the issued capital of the taxpayer company was acquired early in 1967 by an Australian incorporated oil company which previously had marketed its products through a subsidiary (Q Pty. Ltd.). Q Pty. Ltd. held R.A.A.F. and government contracts and was engaged in export and shipping activities in addition to its other marketing operations.

4. After the take-over the name of the taxpayer company was changed, it ceased marketing its old brand of petroleum products and immediately began marketing the brand associated with its new parent. Q Pty. Ltd. continued with its R.A.A.F. and government contracts and its shipping and export agencies but transferred its other marketing operations to the taxpayer company, which resulted in a considerable expansion of the business of that latter company.

RULING

5. The view was taken that, both before and after take-over, the company was a supplier of petroleum products and there was no cessation in this field of business activity. The fact that there was a change in the brand of the product distributed was not considered sufficient of itself to establish that the same business did not continue to be carried on.

6. The enlargement of the business of the taxpayer company was considered to be not necessarily decisive for section 80E(1)(c) purposes. Whilst it could be argued that the taxpayer company lost its identity when its shares were acquired and its name subsequently changed, the legislation does not specify either of these factors as having a bearing on the "same business" test. Where the legal arrangements are such that a

company's business structure remains unchanged - in this instance, the business of supplying petroleum products to retail outlets - it was considered that it could not successfully be maintained that the same business is not being conducted.

7. With regard to section 80E(1)(d) it was noted that Q Pty Ltd. retained its R.A.A.F. and government contracts, its shipping and export agencies, and that the segment of the activities transferred to the taxpayer company involved only the same kind of operations as those carried on at all times by the taxpayer company.

8. As both paragraphs (c) and (d) of section 80E(1) were regarded as being satisfied, it was considered that the taxpayer company was entitled in principle to the benefits of section 80E.

COMMISSIONER OF TAXATION