



***TD 92/175 - Income tax: capital gains: if a company seeks to carry forward a net capital loss but fails the continuing ownership test, can it rely on the same business test as set out in section 80E?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on 22 October 1992

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

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## Taxation Determination

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**Income tax: capital gains: if a company seeks to carry forward a net capital loss but fails the continuing ownership test, can it rely on the same business test as set out in section 80E?**

1. Yes. Subsection 160ZC(5) of the *Income Tax Assessment Act 1936* provides, in effect, that a net capital loss is not taken into account for the calculation of a net capital gain or loss for the next succeeding year of income where, if it had been a loss on revenue account, the loss could not be taken into account "by reason of the operation of section 80A or 80DA".
2. The issue of whether the same business test under section 80E is available arises because subsection 160ZC(5) does not specifically mention that section.
3. The same business test is available as an alternative because section 80A and section 80DA are each expressed to be subject to the operation of section 80E. That is, if the same business test is satisfied, sections 80A and 80DA do not prevent the whole of the loss being taken into account.

**Commissioner of Taxation**

22/10/92