



TD 94/38 - Income tax: does subsection 80A(1) of the Income Tax Assessment Act 1936 require an unbroken compliance for the continuity of ownership test?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 5 May 1994



This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: does subsection 80A(1) of the *Income Tax Assessment Act 1936* require an unbroken compliance for the continuity of ownership test?

1. No. Subsection 80A(1) requires that there be 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 *Kolotex Hosiery (Australia) Pty Ltd v. FC of T* (1972-73) 130 CLR 64 at 82; 73 ATC 4094 at 4105; (1973) 4 ATR 24 at 36.

Example :

During the year ended 30 June 1990, Company X incurred a loss. Its shares (all of one class) were at all times during that year, 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 at all times 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 at all times in the year of loss and in the year of income.

Commissioner of Taxation

5/5/94