INTERPRETATION STATEMENT

Company losses – ownership continuity, sharing and measurement

Issued: 28 October 2022

IS 22/07

This Interpretation Statement considers the rules applying to company losses, including carrying forward losses, sharing losses and the measurement of ownership interests.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

Unless otherwise stated, examples in this statement are to be read independently of each other.

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Overview

1. The loss rules allow a company (a **loss company**[1]) to:

   - carry forward a tax loss to a subsequent tax year – where it will be used to reduce the loss company's net income (if any) or be added to the tax loss for the subsequent tax year;[2] or
   - share a tax loss with a **profit company** in a group of companies.

2. Losses can be used in other ways too (see [43]).

Important concepts: "tax loss" and "tax loss component"

3. An important concept in the loss rules is a **tax loss**. This is essentially the total loss amount for the tax year that can be carried forward or shared. The tax loss concept is described at [33].

4. A tax loss is made up of **tax loss components**. An example of a tax loss component is a net loss[3] from a previous tax year that has been carried forward to the current tax year.

5. Tax loss component is an important concept because key requirements of the loss rules need to be tested for each tax loss component. Tax loss components must also be used in the order in which they arose. The tax loss component concept is described at [38].

Carrying forward a tax loss

6. To carry forward a tax loss one of the following types of continuity must be satisfied:

   - at least 49% continuity in the ownership of the loss company (**ownership continuity**), which is discussed further at [51];

[1] The terms "loss company" and "profit company" are generally not used in the loss rules anymore (they were previously used extensively, but now only feature in a certain anti-avoidance provisions). Nevertheless, for the purposes of this statement the term "loss company" means a company that has a tax loss component that it can use, and "profit company" means a company that has net income (as modified by the loss rules).

[2] There is a temporary rule introduced as a COVID-19 pandemic response that allows a tax loss for the 2020 or 2021 tax year to be carried back. This rule is not discussed further in this Interpretation Statement.

[3] A person's "net loss" for a tax year is the difference between the person's annual total deductions and their annual gross income (ie, where the annual total deductions are higher).

- continuity of the business activities of the loss company (**business continuity**).[4]

7. Continuity must be tested for each tax loss component and must be maintained for the **continuity period** applying to that component. The continuity period is essentially the period from the start of the income year in which the tax loss component arose to the end of the income year in which the loss is used.[5]

Sharing a tax loss with another company

8. Two of the main requirements that must be met for a tax loss to be shared with another company are as follows:
    - The loss company must satisfy one of the continuity requirements discussed above.
    - An **ownership commonality** requirement must be satisfied. Essentially, this requirement is that there is a group of people who each hold ownership interests in the loss and profit companies and the total of each person's lowest interest of the interests in the two companies (their common ownership interest) is at least 66%. This requirement must be tested for each tax loss component and be satisfied for the commonality period applying to that tax loss component.
9. The requirements are discussed in more detail from [61].
10. A profit company must use a tax loss that is shared with it to reduce its net income. The profit company cannot carry the loss forward, share the loss with another company or use the loss in any other way.[6]
11. The amount of tax loss that can be shared is limited by the profit company's net income. The meaning of net income is modified for this purpose. This is discussed at [93].
12. The loss rules recognise that losses may be shared with or without consideration. The rules provide that a payment made for a loss (a subvention payment) will not be a dividend (that is, in situations where the loss company is a shareholder of the profit company).
13. A loss company and a profit company may have income years with different balance dates. This will mean that for a tax year (a tax year always ends on 31 March), the net

[4] The business continuity test is discussed in a separate Interpretation Statement: IS 22/06 "Loss carry-forward – continuity of business activities".

[5] For the purposes of sharing losses, this period is extended to the end of the profit company's income year if the profit company has a later balance date.

[6] However, in a wholly owned group, a tax loss of a loss company can be used to satisfy a shortfall penalty.

loss of a loss company and the net profit of a profit company will be calculated based on income years that do not precisely match. This mismatch will normally not affect the amount of tax loss that can be shared with the profit company.[7]

Measurement of ownership interests

14. The ownership continuity and commonality requirements require a loss company to keep track of changes in the ownership of the loss company and (when sharing losses) profit companies.

15. There are two types of ownership interests:

- voting interests; and
- market value interests.

16. In most cases, it will be necessary to consider only voting interests. However, if there is a market value circumstance, it is necessary to measure both voting and market value interests.

17. There are detailed rules about how to measure these ownership interests (including a look-through rule). These are discussed from [114].

Part-year rules

18. The part-year rules[8] recognise that part way through an income year an event (for example, a change in the shareholding of a loss company) could result in ownership continuity or commonality being breached[9] or established[10] for a tax loss component and a group of persons.

19. In the absence of the part-year rules, if there was a continuity or commonality event part way through the income year, this could prevent a tax loss component from being used for the income year, or from being carried forward.

20. The part-year rules ensure that, in these cases, certain losses can still be used in the relevant part-year periods. This is consistent with the purpose of the loss rules (to ensure that, largely, losses are available to be used by the people who ultimately

[7] However, the difference in balance dates can limit the amount that can be shared where there is a breach of continuity or commonality as the balance dates will constrain the period (referred to in the Act as a **common span**) for which losses can be shared.

[8] The part-year rules are contained in subpart IP.

[9] For tax loss components in the income year and in previous income years.

[10] For part of the net loss for the tax year.

incurred the losses) and avoids an outcome that would otherwise follow from the assessment of income tax on an annualised basis.

21. Generally, a tax loss component that relates to a pre-breach period[11] can be used to reduce the loss company's net income in the pre-breach period and, if sharing requirements are satisfied, an amount of the profit company's net income.[12]

22. A tax loss component (a net loss) that relates to a part-year period following a continuity breach, or following the establishment of commonality between two companies (post-establishment period), can be carried forward by the loss company or shared with a profit company. The profit company can apply this part-year loss against an amount of its net income.[13]

23. The part-year rules are discussed in more detail from [197].

Amended assessments and consequential loss adjustments

24. If the Commissioner makes an amendment to the assessment of a loss company or a profit company, this can lead to consequential loss adjustments (in the assessments of subsequent income years or in the assessments of other companies). Many different scenarios can arise because:

- the amended assessments could result in tax loss or net income being increased or decreased;
- sharing losses depends on both the level of the loss company's tax loss and the profit company's net income (see [11]);
- the loss company may or may not have used or shared all its tax loss;
- reduced tax losses may need to be reallocated among multiple profit companies; and
- where a tax loss has been transferred by subvention payment and the tax loss is reduced, the subvention payment may be treated as a dividend.[14]

25. The effect of amended assessments on losses is discussed in more detail from [246].

[11] Including a previous income year or the part-year period in the year of the breach.

[12] The net income of the profit company that can be reduced is limited to the lower of the profit company's whole-year net income and the net income calculated for a part-year period corresponding with the pre-breach period (called the common span).

[13] The net income of the profit company that can be reduced is limited to the lower of the profit company's whole-year net income and the net income calculated for a part-year period corresponding to the post-establishment period (also called a common span).

[14] This can be avoided if the subvention payment is repaid.

Special rules apply to certain types of loss

26. This Interpretation Statement considers the general loss rules in part I of the ITA 2007.

27. Special rules, outside the scope of this Interpretation Statement, also apply to:

- ring-fenced tax losses including some net losses of mineral miners, attributed CFC net losses, FIF net losses, and PIE net losses;
- loss offsets on an amalgamation or for a consolidated tax group;
- pre-1993 losses;
- deferred deductions (technically not losses) from residential rental properties; and
- for life insurers, policyholder base excess deductions.

Other rules

28. Some points to note about losses and other rules in the Act are set out below.

The look-through company rules

29. In relation to the look-through company rules,[15] losses are treated as being incurred by "look-through counted owners", rather than by the look-through company. There are also specific rules about what happens to losses when a company becomes a look-through company.

The qualifying company rules

30. The qualifying company rules contain rules about losses incurred by a company before becoming a qualifying company.[16] There is also a rule that prevents a qualifying company from receiving losses a from loss company in the same group of companies if the loss company is not also a qualifying company. However, going the other way, there is no rule preventing a qualifying company from sharing its losses with a non-qualifying company.

[15] Subpart HB.

[16] Subpart HA. The qualifying company regime was superseded by the look-through company regime with application to income years beginning on or after 1 April 2011. Companies are no longer able to elect into the qualifying company regime from this date, however, existing qualifying companies can continue to operate under the regime.

31. The qualifying company rules also contain a special 50% continuity requirement that must be met for a company to retain its status as a qualifying company.[17]

Research and development loss tax credit rules

32. Under research and development loss tax credit rules an eligible company can apply to convert tax losses into refundable tax credits.[18] These rules were introduced in 2015 (effective from the 2016 tax year) as part of a Business Growth Agenda designed to encourage business growth and confidence. When a loss amount is converted, Inland Revenue will issue an amended assessment that will show a reduced loss balance.

[17] See s HC 6(3).

[18] Subpart MX.

Important concepts

Tax loss

33. A **tax loss** is an important concept in the loss rules. It is essentially the total loss amount for the tax year that a loss company can share or carry forward to the subsequent tax year.

34. A loss company's "tax loss" for a tax year comprises:

- the **loss balance carried forward** to the tax year;
- as relevant:
  - *less* the loss company's **net income** for the tax year, or
  - *plus* the loss company's **net loss** for the tax year;[19]
- *plus* various other amounts listed in s IA 2(4).

35. A loss balance carried forward to a tax year is usually[20] the tax loss for the preceding tax year that was not used in that year.[21] The unused tax loss for the preceding tax year may include tax loss components that had been carried forward from earlier tax years. The loss balance carried forward to a tax year must be applied against the net income (if any) of the loss company for the tax year.

36. A person has **net income** for the tax year if their annual gross income is greater than their annual total deductions. A person has a **net loss** for the tax year if their annual total deductions are greater than their annual gross income.[22]

Tax loss component

37. A tax loss is made up of **tax loss components**. The concept of a tax loss component is important because continuity and commonality requirements must be tested for each component. Also, tax loss components included in a tax loss must be used in the order in which they arose.

[19] A person's "net loss" for a tax year is the difference between the person's annual total deductions and their annual gross income (ie, where the annual total deductions exceed the annual gross income).

[20] Where there is a breach of continuity in the tax year the loss balance that can be carried forward to the tax year may be limited. This is discussed below in the discussion of the "Part-year rules".

[21] Section IA 3(4). The main way that a company can use a tax loss is by sharing it with a group company (s IA 3(2)). A tax loss can also be used to pay shortfall penalties (IA 3(1)) or to reduce the amount of a taxable distribution received from a non-complying trust (s IA 3(3)).

[22] Section BC 4.

38. Tax loss components include:

- net losses from previous tax years (included in the loss balance carried forward to the tax year);
- the loss company's net loss for the tax year (if any);
- certain additional amounts listed in s IA 2(4), for example, an amount of converted imputation credits arising under s LE 2; and
- certain losses arising before the 2009 income year that the loss company was entitled to carry forward under previous legislation.

Other terms distinguished

39. The concept of a tax loss can be distinguished from the following loss concepts:

- **Available tax loss** describes the loss that can be subtracted from a company's net income to determine its taxable income. An available tax loss for a tax year includes the company's loss balance carried forward to the tax year (which is the unused tax loss from the previous year), losses that have been shared with (or "made available to") the company by other group companies, and various other amounts.
- **Loss balance** is essentially the tax loss for a tax year that is not used. It generally becomes the **loss balance carried forward** for the following tax year.[23]
- **Loss** is a term used to describe a depreciation loss or certain losses related to the CFC and FIF rules. It is also commonly used in a general sense when referring to the different loss concepts in the Act.

How a loss can be used

40. A loss balance carried forward to a tax year must first be used to reduce the net income (if any) of the loss company for the tax year.[24] The use of a loss balance carried forward to reduce net income is subject to continuity requirements (discussed from

[23] Unless there is a breach in the following tax year, in which case the amount that can be carried forward may be limited. See the discussion of the part-year rules later in this Interpretation Statement.

[24] This is part of the calculation of a person's "taxable income" under the core provisions of the Act. Under s BC 5 a person's taxable income is calculated by subtracting any available tax loss from their net income. A loss balance carried forward to a tax year is part of a person's available tax loss (s YA 1).

[48]) being met. Also, for some types of schedular income, a tax loss cannot be used to reduce a loss company's schedular income tax liability.[25]

41. Any remaining loss balance carried forward (after the loss balance is used to reduce any net income of the loss company) forms part of the tax loss for the tax year.

42. The main way in which a tax loss for a tax year can be used is by sharing it with another company in the same group of companies.

43. A tax loss can also be used in the following ways:

- A loss company can use its tax loss to pay a shortfall penalty for which it is liable.[26] This is restricted to shortfall penalties that arise from a tax position taken in relation to income tax.[27] For a company, the amount by which the penalty is reduced is equal to the company tax rate multiplied by the tax loss that is used. For example, a company could pay a shortfall penalty of $28,000 using $100,000 of tax loss (at the current 28% company tax rate). The loss company must notify the Commissioner that it wishes to use the tax loss in this way by the due date for the payment of the penalty.[28]
- Similarly, in only a wholly-owned group, the tax loss of a loss company can be used to pay the shortfall penalty of another company in the group.[29]
- Where the loss company is a beneficiary of a non-complying trust and has derived a taxable distribution from the trust, the loss company can use its tax loss to reduce the taxable distribution.[30]

44. Tax loss components must be used in the order in which they arose.[31] For example, the net loss arising for the 2015 income year (being a tax loss component) must be used before the net loss for the 2018 income year (being another tax loss component).

[25] This prohibition is in s IA 8, which also lists the types of schedular income to which the prohibition applies. These include life insurers' schedular policyholder base income, non-resident passive income for filing taxpayers described in s RB 3, income of non-resident shippers, income of non-resident general insurers, and income subject to an arrangement described in s GB 3BAB. The calculation of schedular income tax liability is in s BC 7. The approach taken to this type of schedular income is to isolate it and calculate what would be the income tax liability of the person if the schedular income was the only income the person derived in that year.

[26] Section IA 3(1). See SPS 16/04: Payment of shortfall penalty using losses (October 2016) for further guidance.

[27] Section IW 1(1).

[28] You can notify the Commissioner using MyIR or in the other usual ways listed on our website (Contact us).

[29] "Wholly-owned group" is defined in s IC 4. Essentially, a wholly-owned group means 2 or more companies in relation to which a group of persons holds ownership interests that total 100%. However, the definition includes an exception to the 100% ownership requirement to cater for small (no more than 3%) ownership interests related to employee share purchase schemes.

[30] Section IA 3(3).

[31] Section IA 9.

Where a loss company wishes to share a loss with a profit company,[32] this ordering rule applies to the tax loss components that can be shared between the two companies. For example, if a loss company and a profit company have a commonality period[33] that begins at the start of the 2017 income year, and the loss company has one tax loss component from the 2015 income year and another from the 2017 income year, the tax loss component from the 2017 income year can be shared with the profit company even if the loss company has not yet used the tax loss component from the 2015 income year.

45. Any tax loss that is not used for the tax year is carried forward to the next tax year as a loss balance (subject to continuity requirements being met).

46. A temporary rule (part of the COVID-19 pandemic response) allows a tax loss for the 2020 or 2021 tax years to be carried back. This rule is discussed in:

- "COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020", *Tax Information Bulletin* Vol 32, No 7 (August 2020): 4; and
- Inland Revenue, COVID-19 Temporary loss carry-back scheme (website last updated 12 July 2021).

[32] Sharing of losses is discussed from [55].

[33] See [76].

Carrying forward a tax loss

47. As noted above, the balance of a tax loss that is not used in a tax year can be carried forward to the following tax year. This is subject to continuity requirements being met for the tax loss components that make up the balance of the tax loss.[34]

Continuity tests

48. There are two continuity tests:

- the ownership continuity test; and
- the business continuity test.

49. At least one of these tests must be satisfied to carry forward a loss.

50. Continuity is tested for each tax loss component and must be maintained for the **continuity period** applying to each tax loss component. The continuity period is essentially the period from the start of the income year that the tax loss component arose to the end of the income year in which the tax loss component is used.[35]

Ownership continuity test

51. The ownership continuity test requires that there is 49% continuity in the ownership of the loss company (**ownership continuity**) over the continuity period.

52. Ownership interests are measured in two ways:

- voting interests;
- market value interests

53. In most cases, it will be necessary to consider only voting interests. However, if there is a market value circumstance, it is necessary to consider both voting and market value interests.

54. There are also many rules that affect the measurement of the ownership interests. For example, there are rules that require looking through chains of ownership. These rules and the terms voting interests and market value interests are discussed together (from [119]).

[34] Sections IA 3(4) and IA 5.

[35] For the purposes of sharing losses, this period may be extended to the end of the profit company's income year, if it has a later balance date.

55. Continuity of ownership is determined by identifying the lowest ownership interest[36] held by an owner during the continuity period. If there is a group of persons[37] whose lowest ownership interests total at least 49%, then the continuity requirement is met. This is illustrated in Example 1.

> Unless stated otherwise examples in this Interpretation Statement are intended to be read independently of each other (that is, facts in one example are not relevant to other examples). The company names "Loss Co" and "Profit Co" are used in many of the examples (and some figures) to reinforce the roles of the companies.

Example 1 - Identifying the lowest ownership interests over the continuity period

Loss Co had a net loss for the 2015 income year of $100,000. It wishes to use this loss to reduce net income that it has for the 2023 income year.

Loss Co has always had a standard balance date.

The continuity period for the 2015 net loss, and for the proposed use in the 2023 income year, is the nine-year period:

- beginning on 1 April 2014; and
- ending on 31 March 2023.

No market value circumstance occurred during the period, so it is necessary to consider only voting interests.

Two shareholding changes occurred over this nine-year period: on 23 November 2018 and 4 October 2020. This is illustrated in the following table.[38]

[36] The Act uses the terms "minimum voting interest" and "minimum market value interest".

[37] Or it could be just one person.

[38] This table shows the calculation of the lowest voting interest for the nine-year continuity period. In calculating this amount, it is sufficient to consider the voting interests on only the dates shown in the table. However, a loss company is also required to provide similar information on an annual basis in its company income tax return (IR4). The return requires a loss company to enter the total lowest economic interests of shareholders during the income year. In the 2022 version of the IR4, this was required by question 41. For example, the total lowest economic interests of the shareholders in Loss Co during the 2019 income year would have been 75% (shareholder 1's interest was 50% for the entire income year, shareholder 2's interest decreased to 25% during the income year and shareholder 3's interest was 0% at the beginning of the income year).

	Voting interests as at 1/4/2014	Voting interests as at 23/11/2018	Voting interests as at 04/10/2020	Lowest voting interest
Shareholder 1	50%	50%	25%	25%
Shareholder 2	50%	25%	25%	25%
Shareholder 3	0%	25%	50%	0%
Total				50%

Loss Co will be able to carry forward the 2015 net loss of $100,000 to the 2023 income year. This is because the total of Shareholder 1 and Shareholder 2's lowest voting interests over the continuity period is 50%, which is more than the required 49% ownership continuity. Shareholder 3's lowest voting interest during the continuity period is 0% as it did not hold any shares at the beginning of the period.

Business continuity test

56. The business continuity test is generally concerned with continuity of the nature of the business activities of the loss company, rather than continuity of ownership.[39]

57. This test applies when a company fails the ownership continuity test.

58. This test is discussed in a separate Interpretation Statement: IS 22/06 "Loss carry-forward – continuity of business activities".

> To avoid complicating the facts, examples in this Interpretation Statement do not take into account any possible reliance on the business continuity test and look solely at the ownership continuity tests where relevant.

Anti-avoidance rules

59. Anti-avoidance rules may apply in relation to arrangements that use or circumvent the continuity rules.[40] These rules are not discussed in detail in this Interpretation

[39] The rules concerning the business continuity test are in subpart IB.

[40] Sections GB 3, GB 3BA, GB 3BAB, GB 3BAC and GB 3B.

Statement. However, a common feature of the rules is that they apply where there is an arrangement and a purpose of the arrangement is to defeat the intent and application of the loss continuity rules or, in the case of some of the provisions, where the arrangement has tax avoidance as its sole or main purpose.

Sharing losses

60. A loss company can share its **tax loss** with a profit company if the requirements listed in [61] are met.

Requirements that need to be met to share losses

61. A loss company can share a tax loss with a profit company only if:[41]

- the loss company meets loss company place requirements;[42]
- notification and payment requirements are met;[43]
- the loss company meets a continuity requirement;[44] and
- the profit company and the loss company meet ownership commonality requirements.[45]

Loss company place of incorporation or carrying on business

62. The loss company must, for the **commonality period**, be either:

- incorporated in New Zealand; or
- carrying on a business in New Zealand through a fixed establishment in New Zealand.

63. The second point above means that a branch of an overseas company can be a loss company (if it is carrying on business in New Zealand through a fixed establishment here). Generally, “fixed establishment” means a fixed place of business in which substantial business is carried on by a person.[46]

64. In relation to the first point above, for a company incorporated in New Zealand, there is an additional requirement.[47] That is, the company must, for the commonality period, not be:

[41] Section IC 5(1).

[42] See s IC 7.

[43] See s IC 9.

[44] See s IC 2(1).

[45] See s IC 6.

[46] Definition of “fixed establishment” in s YA 1. The definition of “fixed establishment” also has specific inclusions and exclusions.

[47] Note that at the time of writing there was an amendment proposed to repeal this additional requirement. See Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2): cl 78.

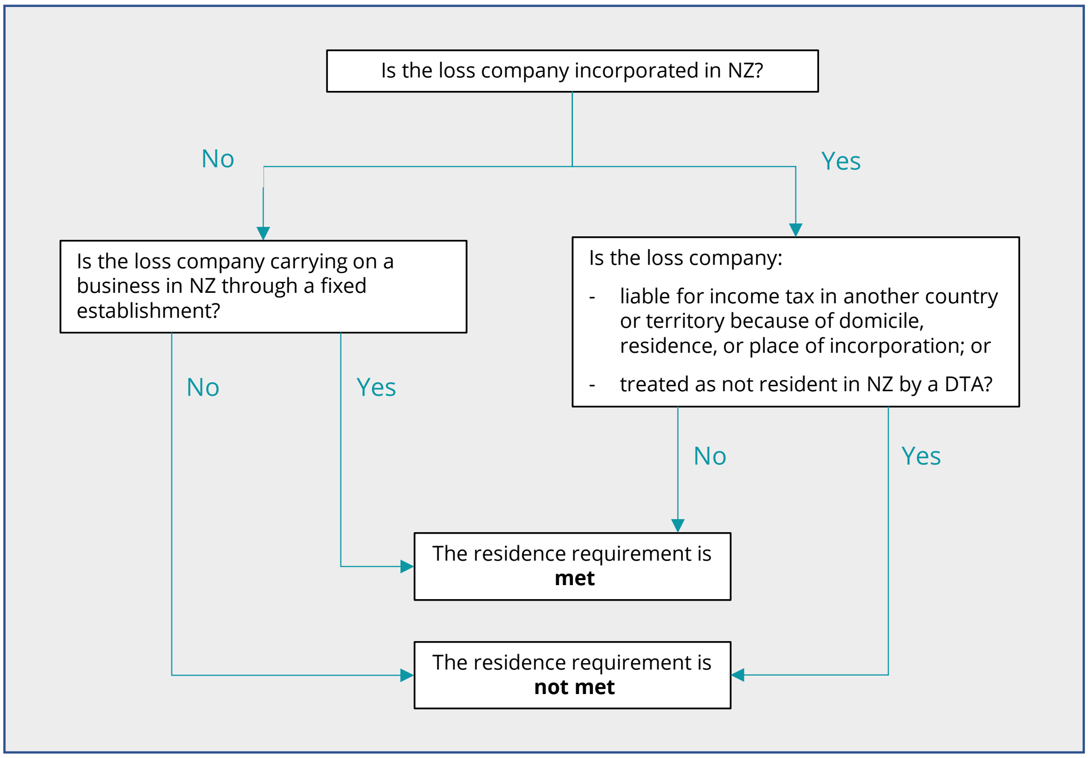
- treated as not resident in New Zealand by and for the purposes of a double tax agreement (**DTA**); or
- liable for income tax in, and under the law of, another country or territory because of domicile, residence, or place of incorporation.

65. In other words, a dual-resident company cannot share a tax loss under the loss rules.

66. The loss company place requirement is illustrated in Figure 1.

67. The residence of the profit company is not important. The profit company may be a non-resident.[48]

Figure 1 - Loss company place requirement



Notification and payment requirements

68. A loss company must notify the Commissioner that a loss has been shared (whether by election or subvention payment) by:

- the **extended return date**, or
- by a later date, if allowed by the Commissioner.[49]

[48] *CIR v Alcan NZ Ltd* [1994] 3 NZLR 439 (CA).

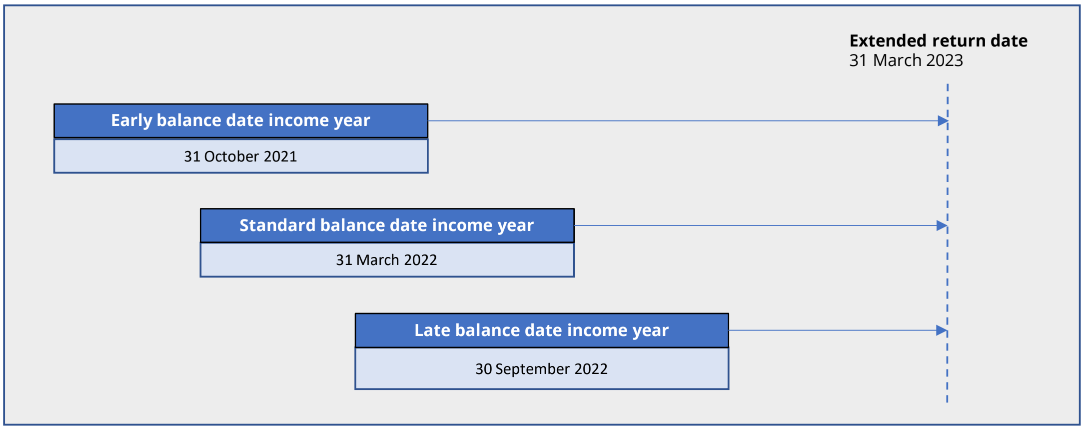
[49] Section IC 9.

69. Also, a profit company that makes a subvention payment must make the subvention payment by the above dates.

70. The extended return date is 31 March of the tax year following the tax year for which the tax loss is being shared. This date is the same whether the loss company has an early, standard, or late balance date. This is illustrated in Figure 2.

71. For more guidance on the notification requirements, including the Commissioner's policy on accepting late elections, see SPS 20/02: Loss offset elections between group companies.

Figure 2 - Extended return date for different balance dates



Continuity requirements

72. To share a tax loss component with a profit company, the loss company must meet one of the ownership or business continuity requirements for the tax loss component. The continuity requirements are discussed above from [13]. As discussed above, a continuity requirement must be satisfied for the continuity period that applies to the tax loss component.

Continuity period extended for the purposes of loss sharing

73. Usually, a continuity period ends on the last day of the loss company's income year. However, the continuity period may be extended in the context of sharing a loss.

74. For the purposes of sharing, the **continuity period** for a tax loss component is the period:[50]

[50] Section IA 5(6).

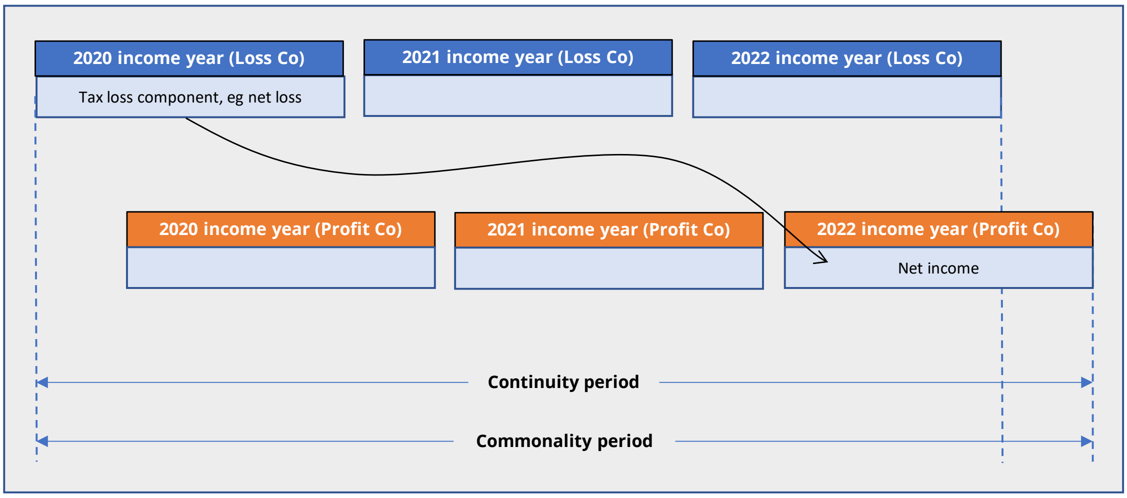
- from the start of the loss company's income year in relation to which the tax loss component arose;
- to the end of the loss company's income year (or the profit company's income year if it has a later balance date)[51] in relation to which the loss company wishes to use the tax loss component.

75. The extension of the continuity period is consistent with the general principle that a tax loss should be available for use only if continuity has been maintained until the end of the period in which the tax loss is sought to be used.

76. The **commonality period** (discussed further below) will be the same as the continuity period.

77. In Figure 3, the tax loss component arising from the 2020 income year is carried forward and not used until the 2022 income year. The figure shows that Profit Co has a later balance date and that this extends the continuity and commonality periods that would apply in considering whether the loss can be carried forward and shared.

Figure 3 - Extension of continuity period for the purposes of sharing losses



Commonality requirement

78. To share a tax loss component, the commonality requirement must also be satisfied.

79. Before discussing the substance of the requirement, it is noted that the commonality requirement must be satisfied at all times during the "commonality period" for the tax loss component. The commonality period is similar to the continuity period (see [73]). The **commonality period** for a tax loss component is the period:

[51] Section s IC 10.

- from the start of the loss company's income year for which the tax loss component arose;
- to the end of the loss company's income year (or the profit company's income year if it has a later balance date)[52] in relation to which the loss company wishes to share the tax loss component.

80. The requirement for the commonality requirement to be met at all times during the commonality period means that:
    - it is important to consider when a company was incorporated or when it became a member of the group of companies;[53] a company will not be able to benefit from a tax loss component from a group of companies if that tax loss component arose before company joined the group; and
    - it is necessary to test commonality at particular times during the commonality period when there are ownership changes.

81. The substantive commonality requirement, applied at a particular time, can be summarised below:
    - The commonality requirement requires consideration of people who hold ownership interests[54] in both the loss company and the profit company.
    - For a person with an ownership interest in both companies, the commonality requirement requires the identification of the lowest of the interests held by the person in the two companies. For example, if at a particular time a person holds a 10% ownership interest in the loss company and a 15% interest in the profit company, their lowest interest in the two companies at that time is 10%.
    - The commonality requirement requires that there is a group of people (which can include a single person) whose lowest interests (as described above) total at least 66%.[55]

82. The substantive commonality requirement described in the points above is to establish commonality at a particular time and is illustrated in Example 2.

[52] Section s IC 10.

[53] "Group of companies" has a specific meaning in the loss rules. Companies for which the commonality requirement are satisfied are referred to as companies in a "group of companies". Section IC 3(1). Note that the term "group of companies" excludes situations where the companies are multi-rate or listed PIEs.

[54] For the ownership interests, it will usually be sufficient to consider voting interests. However, if there is a market value circumstance, it will also be necessary to consider market value interests.

[55] It is important to note that this test (which starts by examining the commonality at the individual level) produces a different result from that produced by considering the common ownership interests of the group of persons at the group level.

83. Because the commonality requirement requires that commonality is maintained at all times during the commonality period, the above test may need to be repeated at different times; that is, when there are ownership changes.

84. Different tax loss components will generally have different commonality periods and, therefore, may need to be tested separately, depending on the timing of ownership changes.

Example 2 – Calculating the total of the lowest common voting interests

On 31 March 2022, Loss Co and Profit Co were owned by Carolyn, Rhys and Leia in the following proportions:

Owner	Loss Co	Profit Co	Lowest common voting interest
Carolyn	25%	50%	25%
Rhys	25%	25%	25%
Leia	50%	25%	25%
	100%	100%	75%

In the above table, the lowest common voting interest for each person in the two companies is identified in the fourth column. The interest is common in the sense that at least that percentage is held in both companies. These lowest common voting interests are then totalled. The table shows that Carolyn, Rhys and Leia are a group of people who at a point in time (31 March 2022) have 75% commonality of ownership over Loss Co and Profit Co.

If, during the commonality period for a tax loss component, the ownership of the companies changes, the same exercise will need to be repeated at different times to ensure the commonality of ownership is at least 66% at all times during the commonality period.

Group of persons can change during a commonality period

85. It is not necessary that the group of persons holding the common ownership interests stays the same for the whole of the commonality period.[56] The focus of the ownership commonality requirement is on the ownership of the loss company and profit company being common, not on the identity of the owners. This is illustrated in Example 3.

Example 3 – Commonality – the group of persons can change

Following on from Example 2, Diya purchases Leia's shares in **both** Loss Co and Profit Co. This leads to there being a new "group of persons". Diya maintains the same level of commonality because she purchased Leia's shares in both Loss Co and Profit Co:

Owner	Loss Co	Profit Co	Lowest common voting interest
Carolyn	25%	50%	25%
Rhys	25%	25%	25%
Leia	0%	0%	0%
Diya	50%	25%	25%
	100%	100%	75%

Commonality would be breached if Diya subsequently sold her shares in the Loss Co. This is because her individual common ownership interest in Loss Co and Profit Co would be zero:

[56] Section IC 3(2).

Owner	Loss Co	Profit Co	Lowest common voting interest
Carolyn	25%	50%	25%
Rhys	25%	25%	25%
Leia	0%	0%	0%
Diya	0%	25%	0%
	100%	100%	50%

86. Although the group of persons can change for the commonality requirement, to share a loss a loss company must maintain ownership continuity of at least 49% during the continuity period (or satisfy the business continuity requirement). For the ownership continuity requirement, there must be a group of persons who at all times during the continuity period have ownership interests that total at least 49%. For example, if during a commonality/continuity period, 52% of the shares in both the loss and profit companies were transferred to an entirely new owner, the 66% commonality requirement would be met but the 49% ownership continuity requirement would not be met.

87. Note that the focus of Example 2 and Example 3 is to illustrate the calculations required for the commonality test, rather than the continuity test. More information would be needed for the companies in the examples to determine whether the continuity test was satisfied for a particular tax loss component (the examples do not identify a particular tax loss component or continuity period to be tested for continuity). However, the facts of the examples would not necessarily result in a continuity breach as the shareholding change in Loss Co was only 50%.

88. Wholly-owned groups are subject to the same commonality requirement as other groups. In particular, it is important to consider when a company in the group was incorporated or when it became a member of the group.

Measurement of common ownership interests

89. The commonality test, like the continuity test, requires a company to keep track of ownership changes. The rules relating to the measurement of ownership interests are discussed from [119].

Anti-avoidance rule

90. An anti-avoidance rule may apply to treat a company as not meeting the loss grouping requirements.[57] This rule applies when:

- an arrangement exists that allows a company (**offset company**[58]) to meet the requirements of certain loss-sharing provisions;[59]
- a share in the offset company or another company has been subject to the arrangement; and
- a purpose of the arrangement is to defeat the intent and application of the loss sharing provisions.

Special rules apply for certain entities

91. Special loss sharing rules apply for:

- mixed ownership enterprises (these are certain listed enterprises that the Government owns in part);[60]
- multi-rate, listed or foreign investment PIEs;[61]
- losses incurred in connection with development work in Niue.[62]

Company trustee cannot share losses

92. A company acting in the capacity as a trustee cannot share losses incurred in that capacity with another company in the same group. This is because s IA 3 (which permits sharing by a loss company) uses the term "company" and this term is defined in s YA 1 to not include a company when acting in its capacity as a trustee.

[57] Section GB 4.

[58] This could be a loss company or a profit company.

[59] Subparts IC and IP, and ss IZ 7 and IZ 8.

[60] Section IC 3(2A).

[61] Section IC 3(2B), (2C), and (2D).

[62] Section IC 13.

Limitations on sharing

Amount that can shared is limited by the profit company's net income as modified by the loss rules

93. The amount that can be shared with a profit company is limited to the profit company's net income modified as described below.[63]

Profit company's modified net income

94. A profit company's net income[64] is modified for the purposes of the loss grouping provisions by subtracting:[65]

- the profit company's own losses (that is, any loss balance the profit company has carried forward to the tax year); then
- a tax loss made available to the profit company by another company, which ensures the total of the losses made available to the profit company by the loss company and any other companies does not exceed the net income of the profit company.

95. The calculation of net income doesn't usually involve tax losses. Usually, it is only in calculating "taxable income" that losses become part of the calculation. Taxable income is calculated by subtracting any "available tax loss"[66] from net income.[67]

Profit company must use the loss to reduce its net income

96. The profit company must use the loss to reduce its net income.[68] The profit company cannot carry forward the loss, share the loss further, or use the loss in any other way.[69]

[63] Section IC 8(1) and (2).

[64] Net income is the difference between annual gross income and annual total deduction (s BC 4).

[65] Section IC 8(3).

[66] "Available tax loss" is discussed at [35].

[67] Section BC 5.

[68] Section IC 5(1) and (3).

[69] The only exception to this is if a company in a wholly-owned group has a tax loss for a tax year, the amount of the tax loss may be used to pay a shortfall penalty of another company in the wholly owned group (s IW 1).

Loss and profit companies can have different balance dates

97. A loss company and a profit company may have income years with different balance dates. This will mean that for a tax year (a tax year always ends on 31 March), the net loss of a loss company and the net profit of a profit company will be calculated based on income years that do not precisely match. This mismatch will not usually affect the amount of tax loss that can be shared with the profit company.[70] However, if the profit company has a later balance date, continuity and commonality requirements must be maintained until the end of the profit company's income year.[71]

Amount that can be shared is limited by certain deductions for bad debts or decline in share value

98. The amount of tax loss that a loss company can share is limited if the:[72]

- tax loss includes a tax loss component (for example, a net loss) that arose from expenditure that was funded by a loan from another company in the group (the **write-off company**);[73] and
- write-off company has taken a bad debt deduction for the loan.

99. In this case, the amount of tax loss that the loss company can share is limited by the amount of the write-off company's bad debt deduction. This is illustrated in Example 4.

Example 4 - Sharing of loss limited by bad debt deduction

Loss Co and Group Finance Co are in the same group of companies. Loss Co borrows $10,000 from Group Finance Co (which is in the business of lending money) to cover rental payments on Loss Co's business premises. The amount was lent under a facility that is a "variable principal debt instrument" and the total value on every day in the income year of all variable principal debt instruments was $50,000 or less (this fact is relevant to Group Finance Co's ability to claim a deduction as discussed further below).

[70] The difference in balance dates can limit the amount that can be shared where there is a breach of continuity or commonality as the balance dates will limit the **common span**.

[71] Section IC 10.

[72] Section IC 12.

[73] The loss company's expenditure does not need to have been directly funded by the loan. For example, the Write-off company could have lent the money to a different company that then on-lent the amount to the loss company.

Loss Co uses the money to pay its rent and claims a deduction for the expenditure in its return for the 2023 income year.

Loss Co makes a net loss of $15,000 for the 2023 income year.

Group Finance Co writes off the $10,000 loan as a bad debt on 31 March 2023 and claims a bad debt deduction in its return for the 2023 income year.

Loss Co wishes to share its $15,000 loss with Profit Co, which has net income of $100,000 for the 2023 income year.

Loss Co, Group Finance Co and Profit Co all have standard balance dates and are all part of a group of companies (the commonality requirement is satisfied for the commonality period applying to the net loss; that is, during the 2023 income year).

The amount that Loss Co can share with Profit Co is limited to $5,000. The remaining loss of $10,000 cannot be shared because Group Finance Co is in the same group of companies and took a deduction for the written off loan that was used to pay for some of the expenditure that led to the net loss.

Loss Co can still carry forward the remaining loss of $10,000 and use it to reduce any net income it may have in subsequent income years.

100. A similar rule applies where:[74]

- the tax loss includes a tax loss component (for example, a net loss) that arose from expenditure that was funded by the loss company issuing shares; and
- a company (the **write-off company**) in the same group of companies has taken a deduction for a decline in the value of the shares issued by the loss company.[75]

101. For the purposes of the above rule, shares are treated as declining in value if:

- there is a loss on the disposal of the shares; that is, the disposal amount is less than the deduction for the cost of the shares; and
- where there has not been a disposal, the value of the shares declines, as calculated under subpart EB or otherwise.

[74] Section IC 12(1).

[75] It is not necessary that the shares were issued directly to the write-off company.

102. These rules limit sharing but do not prevent the loss company from carrying forward the tax loss component and applying the loss against its own net income for future tax years.

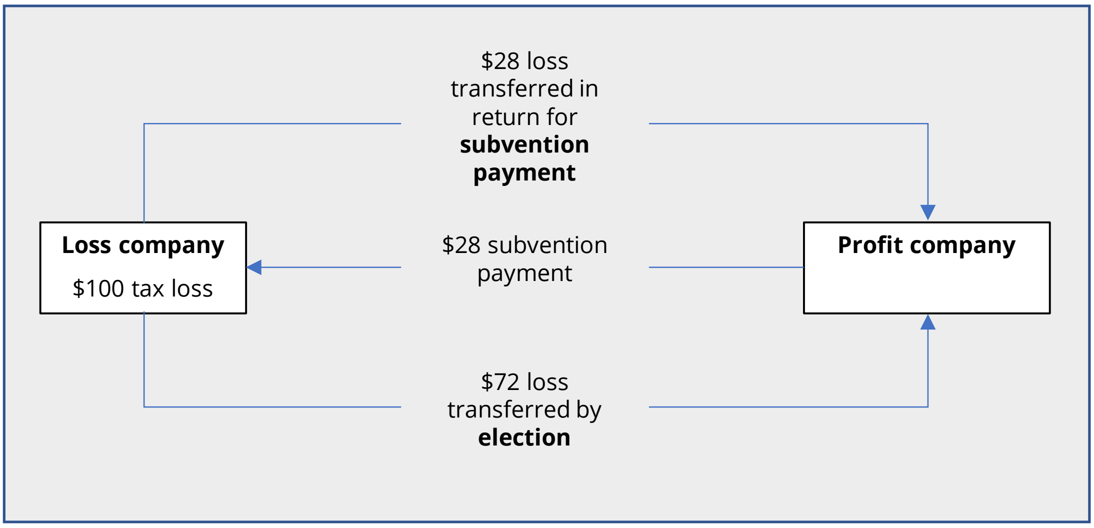
Two ways a loss can be shared

103. The two ways a tax loss can be shared are that the loss company can:[76]

- make an **election** to share a tax loss with a profit company; and
- transfer a tax loss to a profit company in return for a payment (referred to as a **subvention payment**) by the profit company to the loss company.

104. A combination of these methods can be taken in relation to a tax loss. For example, $100 of tax loss can be transferred $28 by subvention payment and $72 by election. This means the subvention payment can be lower than the total loss transferred. This is illustrated in Figure 4.

Figure 4 – Sharing a loss by election and subvention payment



105. A subvention payment may be desirable if the loss company has some shareholders who are not shareholders of the profit company (but commonality requirements are nevertheless met). The subvention payment can compensate the shareholders of the loss company for tax they may need to pay in the future because of the loss company's reduced loss balance. For this reason, it is common for 28 cents to be paid for each dollar of tax loss that is shared (this reflects the 28% company tax rate).

106. In the context of a subvention payment, "payment" has its normal meaning. It is considered that "payment" has a meaning corresponding to the definition of "pay" in

[76] Section IC 5(2).

s YA 1. "Pay" includes to distribute an amount to a person, credit an amount to a person or deal with the amount in the interest of, or on behalf of, a person. This means a profit company can, for example, make a payment to a loss company by acknowledging a debt to the loss company or by forgiving debt that the loss company owes it.[77]

107. A subvention payment cannot be more than the amount of the tax loss that the loss company shares with the profit company.[78]

108. A decision to share a loss, whether by election or subvention payment, must be notified to the Commissioner by the extended return date or by a later date if the Commissioner allows. See [70].

Subvention payment is not a dividend

109. A loss company may be a shareholder of a profit company. In this case, a payment the profit company makes to the loss company could fall within the definition of "dividend" in s YA 1. However, the loss rules treat a subvention payment made by a profit company to a loss company (its shareholder) as not being a dividend.[79]

110. The protection from being a dividend can be lost if the Commissioner amends an assessment of one of the companies and this results in a decrease in the amount of tax loss that can be shared. See [252].

Decision to share a loss cannot be changed

111. If a loss company chooses to share a tax loss with a profit company, the loss company cannot later change its mind; the decision is irrevocable.[80] However, this rule does not prevent the Commissioner from making an amended assessment that reverses the sharing of the loss.[81]

112. Further, this rule does not prevent a loss company from making further loss elections (or receiving further subvention payments). For example, an amendment to a profit company's income tax return could result in the sharing of a tax loss being reversed. In such a situation, the loss company could make a further election to share that tax loss

[77] See also "SPS 20/02: Loss offset elections between group companies", *Tax Information Bulletin* Vol 32, No 3 (April 2020): 18, at [8].

[78] Section IC 8(1) and (2).

[79] Section IC 5(5).

[80] Section IC 5(4).

[81] *Westpac Securities NZ Ltd v CIR* [2014] NZHC 3377. See also "SPS 20/03 Requests to amend assessments" (2 June 2020).

with a different profit company. The effect of amended assessments is discussed further at [243].

Loss company can also transfer imputation credits when sharing losses

113. Where a loss has been shared with a profit company, the Act also allows (where certain requirements are met) imputation credits to be transferred from the loss company (or another company in the same group of companies) to the profit company.[82] This makes up for the fact the loss offset will decrease the amount of tax paid by the profit company, which will result in the profit company generating fewer imputation credits from tax paid.[83]

[82] Section OB 83.

[83] For more information, see, "Taxation (annual rates for 2016–17, closely held companies, and remedial matters) Act 2017 - Loss grouping and imputation credits", *Tax Information Bulletin* Vol 29, No 5 (June 2017): 30 at 110.

Measurement of ownership rights

114. As discussed above, to:

- carry forward losses, a continuity test (ownership or business continuity) must be met; and
- share losses, a continuity test and the commonality test must be met.

115. Both the continuity and the commonality tests require a loss company to keep track of the ownership interests held in the loss company and (if sharing losses) the profit company. The ownership continuity test involves a 49% threshold, and the commonality test involves a 66% threshold.

116. A taxpayer may need to retain records for longer than is required for other purposes. For example, taxpayers are required to retain certain tax records for 7 years after the income year to which they relate.[84] The burden of proving that a tax loss component can be used is on the taxpayer. To satisfy this burden, a company may need to retain records for longer than 7 years.

117. The provisions considered in this part of the Interpretation Statement (that is, the provisions in subpart YC) are also relevant to other rules in the Act, including the imputation credit rules and associated person rules. However, the discussion in this statement focuses on the application of the provisions in subpart YC to the loss rules.

118. As discussed earlier, two types of ownership interest may be required to be tracked: voting interests and market value interests.

Voting interest

119. In a simple case, a person's voting interest in a company will be the same as the percentage of shares they own. This will be the case if there is only one type of share, no options over the shares, and the shares carry standard decision-making rights.

120. In other cases, it is necessary to have closer regard to the definition of "voting interest" in s YA 1. Under the definition, a person's voting interest in a company is the percentage that represents shareholder decision-making rights carried by shares, or options over shares, held by the person—compared to the total shareholder decision-making rights for the company.

[84] Section 22 of the Tax Administration Act 1994.

Shareholder decision-making rights

121. A shareholder decision-making right means a right to vote or participate in any decision-making concerning:

- a dividend or other distribution;
- the constitution of the company;
- a variation in the capital of the company; or
- the appointment of a director of the company.

122. It is possible for the percentage of shareholder decision-making rights carried by a share or option held by a person to differ as between the types of decision-making listed above. If this is the case, then the person's voting interest in the company equals the average (the total weighted average) of those differing percentages.

123. The calculation of this average gives equal weight (25%) to each of the four types of decision-making listed above. If a person has limited rights in relation to one of these types of decision-making, it will bring down the overall average accordingly.

124. Table 1 illustrates the calculation where a company is owned by two shareholders with equal rights, except in relation to the appointment of directors.

Table 1 - Calculation of shareholder decision making rights where proportion differs between types of decision-making rights

Type of decision-making right	Shareholder 1 (class A shares)	Weighted (25%)	Shareholder 2 (class B shares)	Weighted (25%)
Dividends	50%	12.5%	50%	12.5%
Constitution	50%	12.5%	50%	12.5%
Capital	50%	12.5%	50%	12.5%
Directors	100%	25%	0%	0%
Total weighted average		**62.5%**		**37.5%**

Protective rights under the Companies Act 1993

125. Sections 107 and 117 of Companies Act 1993 contain provisions that allow some participation in decision-making that could affect share rights. However, these rights are contingent and temporary in nature. The Commissioner considers that these sections do not give rise to shareholder decision-making rights for the purposes of the loss rules.

126. See "IS 13/02: Income tax – whether certain protective rights conferred by the Companies Act 1993 are shareholder decision-making rights", *Tax Information Bulletin* Vol 25, No 10 (November 2013): 3.

Voting rights where shares are co-owned

127. If shares are co-owned by two or more people, a situation can arise under the Companies Act 1993 where one of the co-owners is treated as having the right to vote at shareholder meetings to the exclusion of other co-owners.[85] The Commissioner's view is that in these situations the voting co-owner will have at least some fiduciary obligations to the other co-owners in relation to the exercise of the voting interest.[86] Therefore, in the Commissioner's view, for the purposes of the loss rules, all the co-owners will share the shareholder decision-making rights in relation to the share. In practice, the appropriate outcome can be achieved by treating the co-owners as if they were a single person in relation to the ownership of the shares for the purposes of determining whether the continuity and commonality requirements are satisfied.

128. If one co-owner was treated as having shareholder decision-making rights and the other co-owner or owners were treated as not having shareholder decision-making rights, it could lead to anomalous results. For instance, depending on who was first listed on the share register for each company, a situation could arise where two companies that are both wholly and jointly owned by the same group of persons could be treated as having no commonality of ownership.

[85] The first co-owner listed on the share register is given the right to vote to the exclusion of other co-owners: s 124 and cl 11 of schedule 1 of the Companies Act 1993. This rule applies only where the company does not have a constitution that provides otherwise.

[86] Note that fiduciary duties do not generally arise from common ownership of property. However, the Court of Appeal in *Sew Hoy v Sew Hoy* [2001] 1 NZLR 391 accepted the proposition that fiduciary obligations may arise when an advantage is obtained by one co-owner utilising a right attaching to the property to the exclusion of others. The situation arising under the Companies Act 1993 for voting at meetings is a situation where one co-owner is given a right to the exclusion of other co-owners and, therefore, it is a case where at least some fiduciary obligations are likely to exist.

Further guidance on the timing of share transfers and who "holds" shares

129. For guidance on who "holds" shares and the nominee rule in s YB 21, see "IS 12/01: Income tax – timing of share transfers for the purposes of the continuity provisions", *Tax Information Bulletin* Vol 24, No 7 (August 2012): 20.

Market value interest

130. As noted above, in most cases, it will be necessary to consider only voting interests. However, if there is a market value circumstance at any time during the continuity or commonality period, it is necessary to consider both voting and market value interests for the period.

131. The purpose of calculating market value interests is to accurately reflect the person's economic interest in the company in circumstances when voting interests do not do so.

132. Essentially, a person's market value interest in a company is the percentage that represents the market value of shares and options the person holds—compared with the total market value of such shares and options in the company.

133. There are a range of financial instruments that could fall within the meaning of a "share" or an option over a share. For example, a profit related debenture can be a "share".

134. The Act specifically defines "market value" for a share or option.[87] There are two definitions, depending on whether the share or option is listed on the official list of a recognised exchange:

- If the share or option is listed, market value means an amount equal to the "middle market quotation". This is essentially the average of the buy and sell prices quoted on the exchange at the close of the market (for example, on the NZX, it will be the average of the "high bid" and "low offer"). This method of determining the market value does not apply if the quotation is not a fair reflection of the market value having regard to certain factors listed in the Act.[88]
- If the share or option is not listed (or if the above definition cannot be used), market value means the amount a willing purchaser would pay to acquire the share or option in an arm's length acquisition, which is determined using a method that:
  - o conforms with commercially acceptable practice;

[87] Section YA 1.

[88] See the factors listed in para (e) of the definition of "recognised exchange" in s YA 1.

- o may, in appropriate cases, have regard to the present value of the company's expected income or cash flows and the realisable value of the company's assets; and
- o results in a valuation that is fair and reasonable.

Market value circumstance

135. A market value circumstance[89] will exist if:

- a company has on issue:
  - o a profit-related debenture;[90] or
  - o a stapled debt security;[91] or
  - o a share where:
    - a dividend is guaranteed or secured by a party other than the company; and
    - the directors of the company know or could reasonably be expected to know at the time that the payment of a dividend is so guaranteed or secured; and
- the debenture, security or share is not:
  - o an excluded fixed rate security;[92] or
  - o a pre-1991 budget security.

136. A market value circumstance also exists where:

- an option exists that is:
  - o to acquire a share in the company (that is, a call option) whether granted by the company or another person; or
  - o to require a person to acquire a share in the company (that is, a put option); and

[89] "Market value circumstance" is defined in s YA 1.

[90] Section FA 2. Without being exhaustive, this is essentially a debenture with a rate of interest that is set from time to time by reference to either the dividend payable by the company or the profits of the company.

[91] Section FA 2B. Without being exhaustive, this is essentially where a debt-security is stapled to a share. Stapled means that the debt security and the share can, or ordinarily can, be disposed of only together.

[92] "Excluded fixed rate security" is defined in s YA 1. Essentially, this is a fixed rate share or debenture that is a stapled debt security, not a profit-related debenture, and does not give the holder any right to vote or participate in any shareholder decision-making, except for certain protective rights.

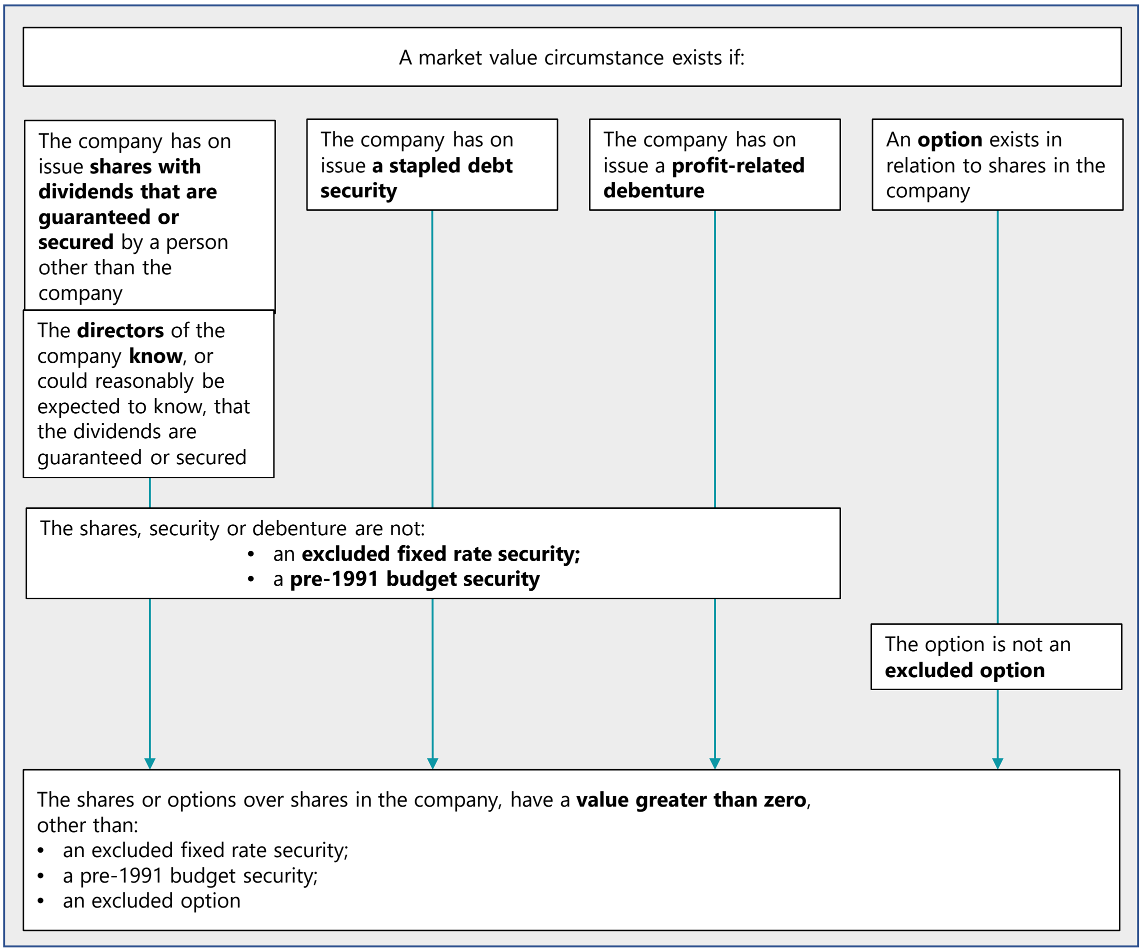
  - o is not an excluded option.[93]

137. Despite the above, a market value circumstance will not exist if:

- none of the shares on issue have a value higher than zero, except for an excluded fixed rate security or a pre-1991 budget security; and
- no option has a value higher than zero, except for an excluded option.

138. The main ways that a market value circumstance can arise are summarised in Figure 5.

Figure 5 – Market value circumstance



139. The definition of market value circumstance also contains an anti-avoidance provision,[94] which, if it applies, treats a market value circumstance as existing.

140. The above types of market value circumstances are referred to as "direct market value circumstances".

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[93] "Excluded option" is defined in s YA 1. The definition is discussed briefly at [127].

[94] Para (e) of the definition of "market value circumstance" in s YA 1.

141. An example of a market value circumstance is provided in Example 5.

Example 5 - Calculating voting and market interests at a point in time

Profit Co is wholly owned by Nadine and her voting interest is 100%. However, a market value circumstance exists for Profit Co because Profit Co has issued a profit-related debenture to Loy. Therefore, it is necessary to calculate the market value interests held by Nadine and Loy.

Nadine's shares in Profit Co have a market value of $500,000. This market value reflects the earning potential and the assets and liabilities (including the debenture) of Profit Co.

A profit-related debenture comes within the meaning of "share". Therefore, it is necessary to determine the market value of the debenture held by Loy, which is $175,000. This is the amount that a willing purchaser would pay to acquire the debenture in an arm's length acquisition (which is likely different from the amount repayable under the debenture).

The total market value of these financial instruments is $675,000. Therefore, Nadine's market value interest is 74% (500/675) and Loy's market value interest is 26% (175/675).

Determining the market value of a share that is subject to an option

142. As noted above, the purpose of calculating market value interests is to accurately reflect the person's economic interest in the company in circumstances when voting interests do not do so.

143. The loss rules take into account the market value of both shares and options. An option over a share can itself have a value to the holder and, at the same time, influence the value of the underlying share. This creates potential for the same economic interest in the company to be double counted, depending on how the market value of the share is calculated.

144. Therefore, the Act provides that if a share in a company is subject to an option, the market value of the share is calculated having regard to the terms of the option.[95] What this means could differ depending on the terms of the option. Further, discussion is beyond the scope of this Interpretation Statement.

[95] Section YC 3(2).

145. The operation of this provision is illustrated in Example 6.

Example 6 – Market value of a share having regard to the terms of an option

Grant holds shares in a company. The shares are subject to an option also held by Grant. The option allows Grant to require the company to repurchase the shares in the company at $2 a share. In the absence of the option, the shares would have a market value of only $1.80 a share.

Grant's market value interest in the company includes the market value of the shares and the market value of the option. The option has a value of at least 20 cents per share.

Because the shares are subject to an option, the market value of the shares must be calculated having regard to the terms of the option. The purpose of having regard to the terms of the option is to avoid double counting. The relevant terms here include that this is a put option. If the value of the shares specified in the option was used, this would double count the value of the option. Therefore, in this case, the value of the shares in the absence of the option should be used, rather than the value specified in the option.

Therefore, for the purposes of the loss rules the market value of each share is $1.80.

Disregarding certain market value changes

146. A continuity or commonality requirement that has not been met is treated as being met if the:[96]

- requirement would have been met but for a change in the market value interest of one or more people; and
- change is attributable to:
  - a change in the market value of an asset (including an intangible asset) of the company;
  - a change in the market value of any one or more shares in the company that is not attributable to any change in the terms of those shares; or
  - a combination of the above.

[96] Section YC 16.

147. This is illustrated in Example 7.

Example 7 - Disregarding a change in the market value of an asset

Loss Co is 100% owned by person A. At all times, person A has voting interests of 100%. Loss Co has a standard balance date.

Loss Co had a net loss for the 2022 income year that has not been used. It wishes to use this tax loss component to reduce its net income for the 2023 income year. Therefore, the continuity period for this tax loss component is the period from 1 April 2021 to 31 March 2023.

On 2 October 2021, a profit-related debenture (which is treated as a share under the Act) was issued to person B. The value of the debenture represents 50% of the total market value of shares in Loss Co.

In the 2023 income year, the value of Loss Co's intellectual property (**IP**) is re-valued, and this results in a decrease in the value of person A's ordinary shares in Loss Co. After the revaluation, person A's ordinary shares represent only 40% of the total market value of shares in Loss Co.

Because there is a market value circumstance (the issue of a profit-related debenture), it is necessary to consider voting interests and market value interests:

- The total of the lowest voting interest for the continuity period is 100% because person A at all times has voting interests of 100%.
- The total of the lowest market value interests for the continuity period is only 40%. This is the lowest market value interest held by person A in the period (the lowest market value interest held by person B is 0% because they began the period with 0% market value interests). See the following table.

This is illustrated in the following table:

	Continuity period begins: 1/04/2021	Issue of debenture 2/10/2021	Effect of IP Revaluation 31/03/2023	Continuity period ends: 31/03/2023	Lowest market value interest
Person A	100%	50%	40%	40%	40%
Person B	0%	50%	60%	60%	0%
Total					40%

In the absence of a rule disregarding changes in market value, the continuity requirement for carrying forward the 2022 net loss would not be met (40% is less than 49%). However, because the failure to meet the requirement is attributable to the change in the market value of Loss Co's IP, the continuity requirement is treated as being met under s YC 16.

Certain financial instruments are disregarded

148. A variety of financial instruments could carry shareholder decision-making rights (which could result in a voting interest) or fall within the meaning of a share or an option over a share (which could result in a market value interest). However, certain financial instruments are disregarded for continuity and commonality purposes, which means changes in the ownership of these instruments do not need to be tracked.[97] The instruments that are disregarded are:

- an excluded fixed rate security[98] issued by a company;
- an excluded option granted in relation to a company; and
- a pre-1991 budget security[99] issued by a company.

149. These instruments are disregarded in the sense that they are treated as never having been issued or granted and as never having been held by the holder.

[97] Section YC 6.

[98] "Excluded fixed rate security" is defined in s YA 1. Essentially, this is a fixed rate share or debenture that is a stapled debt security, not a profit-related debenture and does not give the holder any right to vote or participate in any shareholder decision-making, except for certain protective rights.

[99] "Pre-1991 budget security" is defined in s YA 1.

Excluded option

150. The Act contains a detailed definition of "excluded option".[100] Briefly, it means an option to acquire or dispose of a share in the company in any of the following situations:

- The option is granted on arm's length terms and the option does not give the holder any right to vote or participate in any shareholder decision-making (with the usual exceptions to prevent alteration). A specific anti-avoidance rule can apply in this situation. This point is likely to exclude most options from consideration when determining voting or market value interests.
- The price payable to acquire the share on the exercise of the option is set by reference to the market value of the share on the date the option is exercised (or an amount that is not materially different), and the option does not give the holder any right to vote or participate in any shareholder decision-making (with the usual exceptions to prevent alteration).
- The directors of the company do not know and could not reasonably be expected to know that the option had been granted.
- The grantor of the option (or any person associated with the grantor of the option at the time the option is granted) did not hold a share in the company over which the option is granted at the time the option is granted, whether directly or indirectly. However, this point does not apply if the grantor of the option is the company.
- The share is an excluded fixed rate security, subject to s YC 20 in the case of the credit amount continuity provisions.
- Essentially, the option relates to a pre-1991 budget security that was granted before the specified time on 30 July 1991 and the terms of the option have not been altered since that time.

Death of share or option holder

151. If a person acquires a share or option on the death of a person (the **deceased person**) as a beneficiary or trustee under the will or intestacy, the person is treated as:

- having acquired the share or option on the date the deceased person acquired it; and
- having held it until the person in fact acquired it.

[100] In s YA 1.

152. This treatment will preserve continuity of ownership in relation to the share or option, which could prevent a breach of continuity that might otherwise have occurred. This is illustrated in Example 8.

Example 8 – Death of shareholder

Loss Co has a $10,000 tax loss component that arose in the 2017 income year that has been carried forward.

Loss Co is 100% owned by person A. On 24 June 2022, person A dies and their shares in Loss Co are transferred to trustee X. Trustee X retains the shares for the duration of the Loss Co's 2023 income year ending 31 March 2023.

In the absence of any rule providing otherwise, this transfer on the death of person A would result in a continuity breach as the total of the lowest voting interests would be zero.

However, under s YC 8, trustee X is treated as having acquired the shares when they were acquired by person A (sometime before the 2017 income year).

	Voting interests as at 1/4/2016	Voting interests as at 24/6/2022	Voting interests as at 31/3/2023	Lowest voting interest
Person A	100%	0%	0%	0%
Trustee X	0%	100%	100%	0%
Total				0%
Section YC 8 treatment				
Trustee X	100%	100%	100%	100%

This preserves ownership continuity for Loss Co, meaning the 2017 tax loss component can be carried forward to the 2023 income year.

153. The transfer of a share in a company on the death of a person could still result in a change in the commonality of ownership of the company and another company in a group going forward. For this reason, where a deceased person had shares or options in two or more companies in a group of companies, and an executor plans to transfer

the shares to beneficiaries, the proportions in which the shares in the companies are transferred to beneficiaries may affect whether commonality is preserved.

Transfer of share or option on settlement of relationship property

154. Similar treatment applies to a person who acquires a share or option on a settlement of relationship property. In this case, the recipient of the property is treated as:[101]

- having acquired the share or option on the date it was acquired by the transferor; and
- having held it until the person in fact acquired it.

Shares or options held by trustees

155. For continuity and commonality purposes, all the trustees of a trust that hold (in their capacity as trustees of the trust) a share or option in a company are treated as a notional single person. The notional single person is treated as:

- not being a company (even if the trustees include corporate trustees); and
- separate and distinct from any other capacities that the trustees may have (for example, their personal capacities or their capacities as trustees of other trusts).[102]

156. This treatment means if there is a change in the ownership of shares resulting from a change in the trustees of the trust, the change in ownership will have no effect on continuity or commonality of ownership.

157. This treatment also means ownership interests are not attributed beyond the notional single person; that is, to the beneficiaries of the trust. Attribution under the look-through ownership attribution rules is discussed from [181].

158. The treatment of shares or options held by trustees is illustrated in Example 9.

159. This treatment is subject to anti-avoidance rules.[103]

[101] Section FB 10.

[102] Section YC 9.

[103] See s YC 9(2) to (4) and s GB 5.

Example 9 – Shares or options held by trustees

Loss Co is 100% owned person A as the sole trustee of trust Z. Person A retires as trustee and is replaced by person B. As a result of the change in trustee, the shares in Loss Co are transferred from person A to person B.

The transfer of the shares has no effect on continuity or commonality of ownership because the shares are at all times treated as being held by a notional single person; they are never treated as being held by person A or person B.

Special corporate entities (including incorporated societies)

160. The treatment of shares or options held by special corporate entities is similar to the treatment of shares or options held by trustees. However, unlike trustees of a trust, a special corporate entity may be able to share a tax loss.[104]

161. A "special corporate entity" includes public and local authorities, incorporated societies, and other specified entities that typically do not issue shares to shareholders.

162. However, for tax purposes a special corporate entity is treated as having issued shares. The shareholders[105] are treated as holding the shares and related rights (including any indirect interests attributed under the look-through rule) as a notional single person (similar to the trustees of a trust).

163. The notional single person treatment will ensure that ownership continuity is always maintained allowing a special corporate entity to carry forward losses.

164. Losses can be shared between a special corporate entity and companies owned by the special corporate entity, provided that commonality and other requirements for sharing are met. However, losses cannot be shared between a special corporate entity and its members.

[104] Trustees of a trust cannot share a tax loss because a trust is not a company (also a corporate trustee is treated as not being a company for these purposes).

[105] The shares are treated as held by members, for the time being, of the entity (or by directors if there are no members or, in the case of a public authority or state enterprise that does not have members or directors, by the Minister of the Crown).

Shareholders holding direct ownership interests of less than 10%

165. For continuity and commonality purposes, ownership interests of less than 10% in a subject company (a loss or profit company) are treated as held by a notional single person.[106] This allows smaller ownership interests to be tracked together as a group.

166. This rule applies where:

- a person has a direct ownership interest in a subject company of less than 10%; and
- the person is not a company that is associated with the subject company.

167. Note that this rule applies to **direct** ownership interests; that is, it is applied before the look-through ownership attribution rules (discussed from [181]) are applied.

168. Because the ownership interests of less than 10% are treated as being held by the notional single person and not the direct owner, this rule also has the effect of preventing these ownership interests from being attributed to indirect owners under the look-through ownership attribution rules.

169. The application of this rule is illustrated in Example 10.

170. The ownership interests treated as held by the notional single person may contribute to a company maintaining its continuity of ownership during a commonality period. However, despite the application of this rule, the requirements of a continuity or commonality provision can be treated as not being met in the situation described at [175].

Example 10 – Shareholders holding direct ownership interests of less than 10%

Loss Co has a $10,000 tax loss component arising from the 2019 tax year that hasn't been used yet. It wishes to use this loss for the 2023 tax year. Loss Co has a standard balance date.

During the continuity period for this tax loss component (1 April 2018 to 31 March 2023) there are two shareholding changes:

- On 23 June 2019, shareholder 1 sells all their shares (with voting rights of 45%) to shareholder 5.

[106] Section YC 10.

- On 17 October 2021, shareholder 4 sells all their shares (with voting rights of 7.5%) to shareholder 6.

The effect of these changes is illustrated in the following table.

Shareholders	Voting interests at different times during the continuity period				Lowest voting interest
	1/4/2018	23/6/2019	17/10/2021	31/3/2023	
Shareholder 1	45%	**0%**	0%	0%	0%
Shareholder 2	40%	40%	40%	40%	40%
Shareholder 5	0%	**45%**	45%	45%	0%
Notional single person					
Shareholder 3	7.5%	7.5%	7.5%	7.5%	
Shareholder 4	7.5%	7.5%	**0%**	0%	
Shareholder 6	0%	0%	**7.5%**	7.5%	
Notional single person	15%	15%	15%	15%	15%
Total	100%	100%	100%	100%	55%

Shareholders 3, 4, and 6 satisfy the requirements of s YC 10 for their voting interests to be treated as held by the notional single person:

- their direct voting interests are less than 10%, and
- they are not companies that are associated with Loss Co (that is, none of the associated person tests in s YB 2 are satisfied between them and Loss Co).

In this case, the sale of shares by shareholder 4 to shareholder 6 had no effect on the level of voting interests that are treated as held by the notional single person.

The combination of the 40% lowest voting interest for shareholder 2 and the 15% lowest voting interests treated as held by the notional single person is sufficient to maintain continuity during the continuity period.

Therefore, Loss Co can carry the $10,000 loss forward to the 2023 tax year.

171. If a person's direct ownership interest increases to 10% or more, the notional single person rule will no longer apply to their interest. In the absence of any relief, this could result in a change of ownership that could impact on continuity and commonality requirements. However, relief is provided by the rule to ensure concessionary treatment described below. This rule would allow the company to account for the ownership interest of the person from the beginning of the continuity or commonality period for the purposes of carrying forward or sharing a tax loss component.

Rule to ensure concessionary treatment

172. The rule applying to direct ownership interests of less than 10% is intended to be concessionary for taxpayers. However, in some cases, the application of this concessionary rule can result in continuity or commonality requirements **not** being met.[107]

173. The Act responds to this issue by treating continuity or commonality requirements as being met for a company at a particular time if:

- the continuity or commonality requirements are not met at the time, but
- would have been met but for the application to a particular extent of the concessionary rule.[108]

174. This is illustrated in Example 11.

Example 11 – Breach caused by a person's ownership interest increasing to 10% or more

Same facts as in Example 10, except that on 31 March 2023 shareholder 3 acquires 5% of the shares in the company held by shareholder 5.

This takes shareholder 3's ownership interest from 7.5% to 12.5%. This is outside the coverage of the concessionary rule applying to direct ownership interests of less than 10%.

As illustrated in the following table, in the absence of any relief, this change in shareholding would result in a breach of the continuity requirement for Loss Co. Despite there only being a 5% change in ownership, the total lowest voting

[107] See Example 11. Another example is that the treatment under s YC 10 can prevent look-through of small ownership interests to other owners that might have contributed to a relevant threshold being met.

[108] Section YC 14.

interest would decrease by 7.5% down to 47.5%, which is below the 49% threshold.

Shareholders	Voting interests at different times during the continuity period				Lowest voting interest
	1/4/2018	23/6/2019	17/10/2021	31/3/2023	
Shareholder 1	45%	0%	0%	0%	0%
Shareholder 2	40%	40%	40%	40%	40%
Shareholder 3	0%	0%	0%	**12.5%**	0%
Shareholder 5	0%	45%	45%	**40**%	0%
Notional single person					
Shareholder 3	7.5%	7.5%	7.5%	-	
Shareholder 4	7.5%	7.5%	0%	0%	
Shareholder 6	0%	0%	7.5%	7.5%	
Notional single person	15%	15%	15%	7.5%	**7.5%**
Total	100%	100%	100%	100%	47.5%

However, the Act provides relief if the continuity requirement would have been met but for the application of the concessionary rule.

The following table shows the ownership interests in Loss Co if the concessionary rule had not been applied to the ownership interests of shareholder 3 from the beginning of the continuity period.

Shareholders	Voting interests at different times during the continuity period				Lowest voting interest
	1/04/2018	23/06/2019	17/10/2021	31/03/2023	
Shareholder 1	45%	0%	0%	0%	0%
Shareholder 2	40%	40%	40%	40%	40%
Shareholder 3	7.5%	7.5%	7.5%	**12.5%**	7.5%
Shareholder 5	0%	45%	45%	**40%**	0%
Notional single person					
Shareholder 4	7.5%	7.5%	0%	0%	
Shareholder 6	0%	0%	7.5%	7.5%	
Notional single person	7.5%	7.5%	7.5%	7.5%	7.5%
Total	100%	100%	100%	100%	55%

The table shows that the total of the lowest voting interests would be 55%, which is above the 49% threshold. This means that the continuity requirement would have been met but for the application of the concessionary rule. As a result, the Act will treat the continuity requirement as being met.

Therefore, Loss Co can still carry the $10,000 loss forward to the 2023 tax year.

Anti-avoidance provision

175. Despite the application of the concessionary rule applying to direct ownership interests of less than 10%, an anti-avoidance provision may apply to treat the continuity or commonality requirements as not being met.[109]

176. In determining whether the anti-avoidance provision applies, a company can disregard share and option transactions of a certain type.[110] These include certain on-market and off-market transfers between shareholders or between shareholders and the company.

177. If there are other share transactions that cannot be disregarded, it is necessary to consider whether those transactions would, but for the application of the

[109] Section YC 15.

[110] Listed in s YC 15(1)(b).

concessionary rules, have resulted in the breach of a continuity or commonality requirement. If they would, then it is necessary to apply a director knowledge test.[111] Under this test, it is necessary to determine whether the directors of the company knew, or could reasonably have been expected to know without making enquiries specifically for the purposes of applying the continuity provisions, that the transactions (that is, the transactions that cannot be disregarded) would result in the breach of the continuity or commonality requirement. If the director knowledge test is satisfied, then the anti-avoidance provision will treat the continuity or commonality requirement as not being met.

178. The knowledge requirement may be more easily satisfied for companies with few shareholders and whose directors are more involved in the tracing of shareholder changes.

Special rules

179. Special rules apply:

- for a company that is a "special corporate entity" as defined in s YA 1;[112]
- where an insurer stops being a special corporate entity because of demutualisation;[113]
- to the Crown's investment in a mixed ownership enterprise;[114]
- to reverse takeovers[115] and corporate reorganisations that, economically, would not result in an ownership change that would breach continuity;[116]
- to the legislative conversion of a foreign company of proprietors;[117] and
- to the termination of trusts for the sole benefit of the New Zealand government or an overseas government.[118]

180. These special rules are outside the scope of this Interpretation Statement.

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[111] Section YC 15(1)(c).

[112] Section YC 5. The definition of special corporate entity includes, among other entities, public and local authorities, and other specified entities that typically do not issue shares to shareholders.

[113] Section YC 17.

[114] Defined in s YC 5B and listed in part B of sch 36. There were four mixed ownership enterprises as of 2 May 2022: Air New Zealand Ltd, Genesis Energy Ltd, Meridian Energy Ltd, and Mighty River Power Ltd (now Mercury NZ Ltd).

[115] Section YC 18.

[116] Section YC 18B.

[117] Section YC 19.

[118] Section YC 19B.

Look-through ownership attribution rules

181. Generally, the look-through ownership attribution rules attribute ownership interests in a subject company[119] up any chain of ownership to the ultimate owners of the subject company (although in some cases, as discussed at [189], attribution will stop before reaching the ultimate owner). Generally, the ultimate owners are treated as having ownership interests, and the intermediate owners[120] are treated as not having those interests.[121]

182. An ultimate owner may have ownership interests in a subject company through more than one chain of ownership (including through a direct ownership interest). Where this is the case, the ownership interests are aggregated to find the ultimate owner's ownership interest.[122]

183. The look-through mechanism operates by treating a person with an ownership interest in an intermediate company as having a portion of the intermediate company's (direct or indirect) ownership interest in the subject company. This portion is calculated by multiplying the person's ownership interest in the intermediate company with the intermediate company's (direct or indirect) interest in the subject company.[123] This attribution can occur multiple times before the interest is attributed to the ultimate owner (or attribution otherwise stops). The attribution calculation is illustrated in Example 12 (based on voting interests) for one of the ultimate owners of a subject company. The attribution calculation needs to be performed for all the ultimate owners unless a look-through exception applies.

[119] This statement uses the term "subject company". Note s YC 4 refers to this company as the "issuing company".

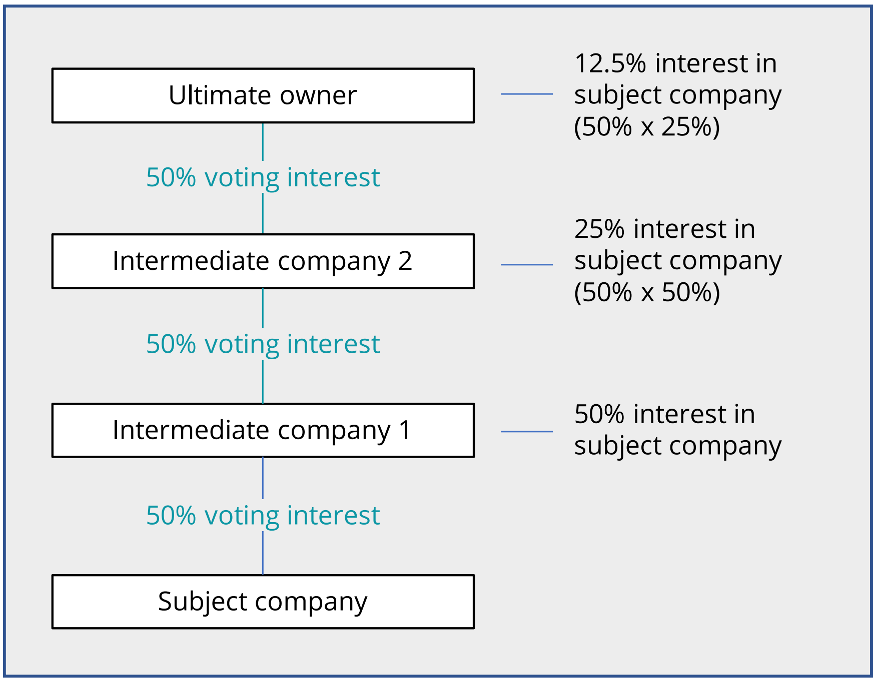
[120] This statement uses the term "intermediate owner". Note s YC 4 refers to this company as the "shareholder company".

[121] This is provided for in s YC 4(2) (for voting interests) and (5) (for market value interests).

[122] Section YC 4(2) and (5).

[123] Section YC 4(3) and (6).

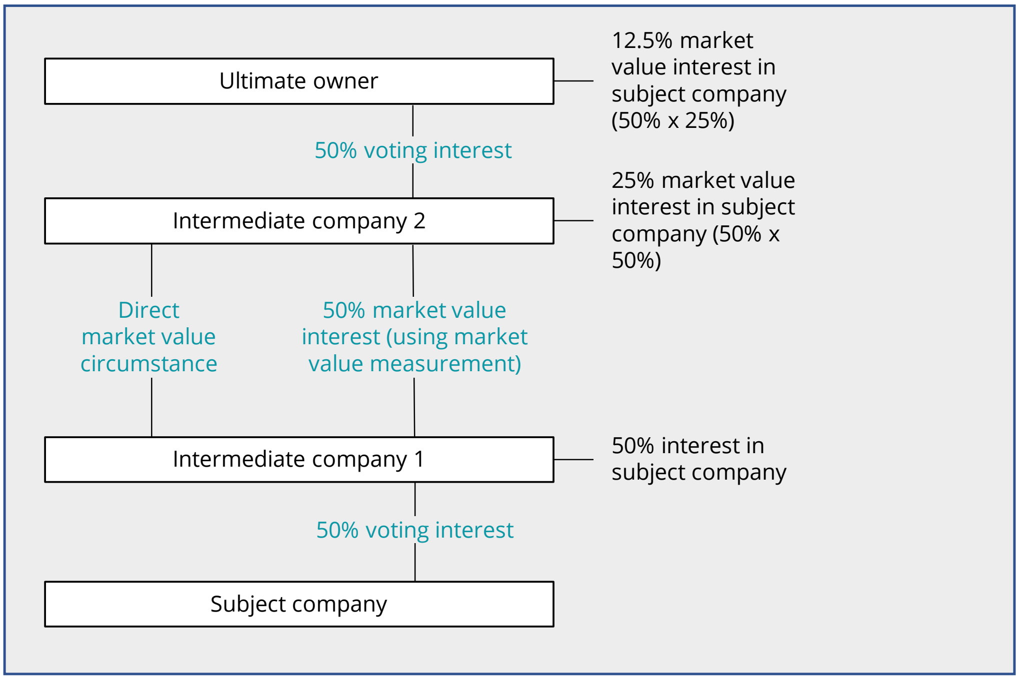
Example 12 – Attribution calculation for one ultimate owner



184. Where a company in a chain of ownership has a market value circumstance, it will also be necessary to calculate the market value interests held in that company (that is, using the market value calculation). For other companies in the chain of ownership that do not have a market value circumstance, voting interests in those companies are used to calculate indirect market value interests in the subject company and to attribute market value interests to the ultimate owners.[124] This is illustrated in Example 13 with respect to one of the ultimate owners.

[124] Section YC 4(8).

Example 13 - Look-through – market value interests



185. In Example 13, a direct market value circumstance exists in relation to intermediate company 1 (for example, because intermediate company 2 holds a non-market option over shares in intermediate company 1).

186. Because of this, intermediate company 2 must calculate its market value interest in intermediate company 1. The market value interest in intermediate company 1 is then used to calculate intermediate company 2's indirect market value interest in the subject company. To do this, intermediate company 2 must multiply its market value interest in intermediate company 1 by intermediate company 1's voting interest in the subject company. This gives intermediate company 2 a 25% market value interest in the subject company.

187. It is also necessary for intermediate company 2's 25% market value interest in the subject company to be attributed to the ultimate owner. This is attributed based on the ultimate owner's voting interest in intermediate company 2. This is calculated by multiplying the ultimate owner's 50% voting interest in intermediate company 2 by intermediate company 2's 25% market value interest in the subject company.

188. This gives the ultimate owner a 12.5% market value interest in the subject company from this chain of ownership. This interest is added together with any other interest that the ultimate owner has in the subject company through other chains of ownership. For example, if the ultimate owner also has direct voting rights of 10% in the subject company, then overall it would have a market value interest of 22.5% (12.5% + 10%).

Look-through may stop with an intermediate company in a chain of ownership

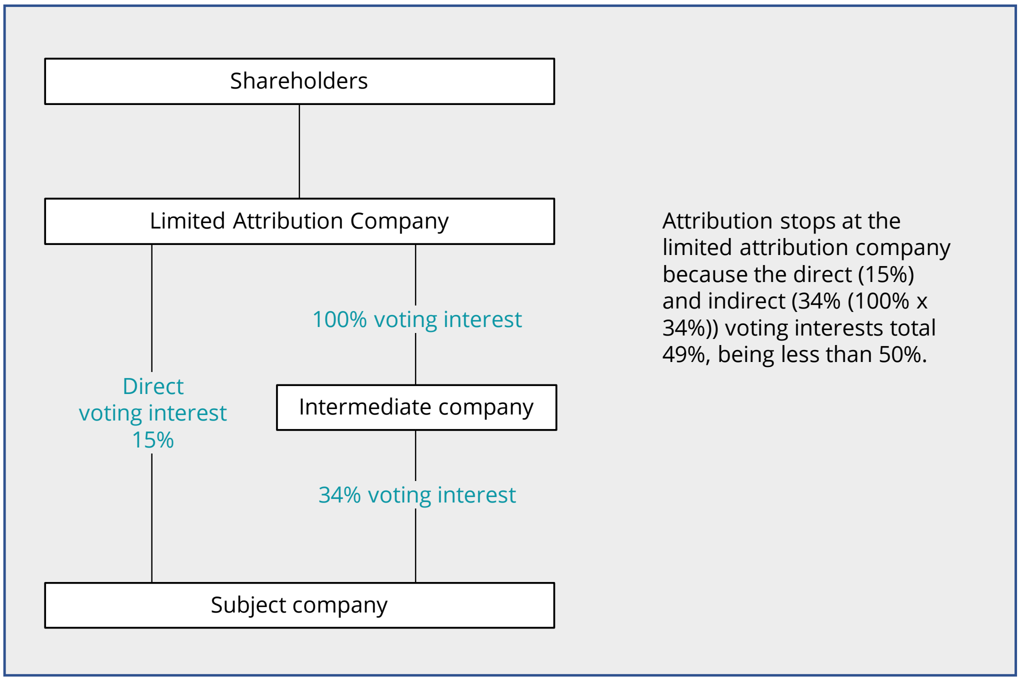
189. Generally, the look-through rule will continue to attribute interests in a subject company until the interest is attributed to a natural person (or to a notional single person as in the case of shares held by trustees). However, in the following cases, attribution will stop with an intermediate company in a chain of ownership. This is to reduce compliance costs associated with attribution.

Attribution stopping at limited attribution company

190. Attribution will stop with a limited attribution company if the company's (direct and indirect) ownership interests in the subject company total less than 50%.[125] This is illustrated in Example 14.

191. "Limited attribution company" is defined in s YA 1 as a company that is a building society, registered co-operative company, listed company, widely-held company, or foreign company that is not a closely-held company.

Example 14 – Attribution stopping at limited attribution company



[125] Section YC 11(2).

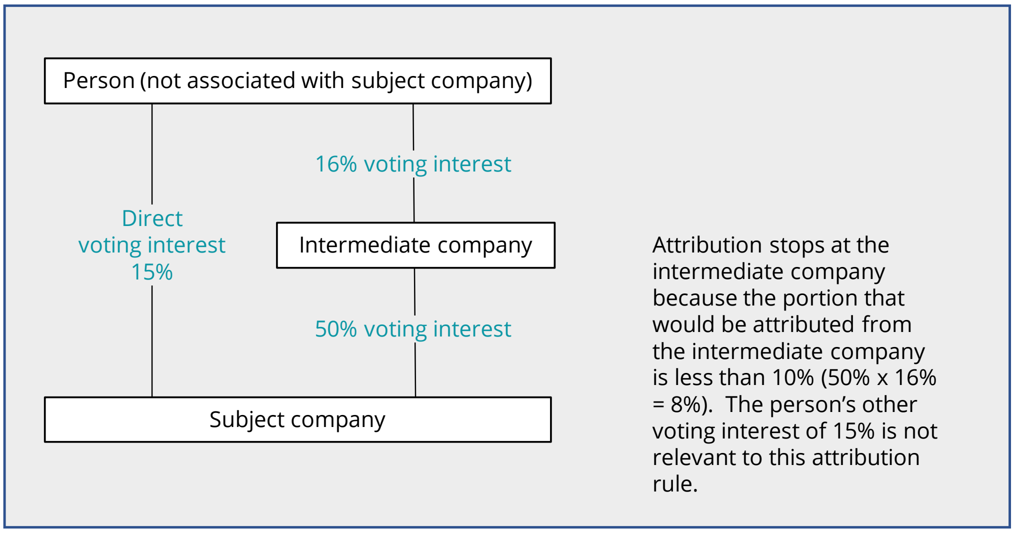
Attribution stopping with intermediate company if the amount that would be attributed is less than 10%

192. The attribution of a portion of ownership interests in a subject company will stop with an intermediate company if the:[126]

- portion that would otherwise be attributed by the intermediate company to a person is less than 10%; and
- person is not associated with the subject company.

193. This is illustrated in Example 15.

Example 15 – Attribution stopping with intermediate company if amount that would be attributed is less than 10%



Variation to attribution intended to be concessionary

194. The above variations to the general look-through rule are intended to be concessionary. If continuity or commonality requirements would have been met but for the application of these variations, then the continuity or commonality requirements are treated as being met.[127] This is subject to the same condition as described at [174].

[126] Section YC 11(3).

[127] Section YC 14.

Special look-through rules for certain types of entity

195. Special look-through rules apply in relation to certain types of entity and situations, including rules relating to:

- public unit trusts;[128] and
- corporate spin-outs.[129]

196. These special rules are outside the scope of this Interpretation Statement.

Part-year rules

Introduction

197. Under the general loss rules, for a tax loss component to be used for a tax year, the loss company must meet the continuity requirement:

- from the start of the period in which the tax loss component arose;
- until the end of the income year corresponding to the tax year in which the loss is sought to be used.

198. Similarly, for a tax loss to be shared, commonality must also be satisfied for this period.

199. The part-year rules[130] recognise that part way through an income year there could be an event (for example, a change in the shareholding of a loss company) that results in continuity or commonality being breached[131] or established[132] for a tax loss component and a group of persons.

200. In the absence of the part-year rules, if a continuity or commonality event occurred part way through the income year, this could prevent a tax loss component from being used or shared for the corresponding tax year or from being carried forward.

201. In these cases, the part-year rules ensure certain losses can still be used in the relevant part-year periods. This is consistent with the purpose of the loss rules (to ensure that, largely, losses are available to be used by the people who ultimately incurred the

[128] Section YC 12.
[129] Section YC 13.
[130] The part-year rules are in subpart IP.
[131] For tax loss components in the income year and in previous income years.
[132] Generally, for part of the net loss for the tax year.

losses[133]) and avoids an outcome that would otherwise follow from the assessment of income tax on an annualised basis.

202. There are also part-year rules that cater for breaches of the business continuity rules. However, these are outside of the scope of this Interpretation Statement. See the Interpretation Statement IS 22/06 "Loss carry-forward – continuity of business activities".

Summary of what the part-year rules do

203. Where there is a continuity breach for a tax loss component from an earlier income year, under the part-year rules the component can still be used to reduce the pre-breach net income of the loss company. Then, if commonality is satisfied, the tax loss component from the earlier income year can be used to reduce the pre-breach net income of a profit company.[134]

204. Similarly, if there is a tax loss component (for example, a net loss) for the pre-breach part of the income year,[135] the amount could, if commonality were satisfied during that part-year period, be shared and used to satisfy the pre-breach net income of a profit company.[136]

205. Following a breach of continuity, the part year rules allow a loss company to carry forward a net loss for the post-breach period.

206. The part-year rules also cater for the possibility that commonality is established part-way through the income year between a loss company and a profit company. In this case, where the commonality is maintained for the part-year period, the part year rules allow sharing of the net loss incurred in the part-year period.[137]

Carrying forward losses under the part-year rules

207. There are two carry forward scenarios to consider for a loss company:

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[133] To the extent that the business continuity rules do not apply.

[134] This is also limited to the full year net income if that is lower (ss IP 4(2)(ab) and (4) and IC 8). The full year net income might be lower if income and expenses fluctuate for the profit company during the income year.

[135] The part-year rules are not restricted to net loss tax loss components, but this will be the main type. Other types of tax loss component such as CFC and FIF losses are outside the scope of this statement. For simplicity, in the year of breach, the rest of this part of the statement will simply refer to net losses.

[136] This is also limited to the full year net income if that is lower (ss IP 4(2)(ab) and (4) and IC 8). The full year net income might be lower if income and expenses fluctuate for the profit company during the income year.

[137] As noted above, CFC and FIF losses are outside the scope of this statement but note that the part-year rules do not apply to the sharing of these types of loss. See s IQ 4(2)(d).

- Where there has been a breach of contin7uity in an income year for a tax loss component from a previous income year, the tax loss component can potentially be **carried forward to the breach income year**.[138] This is sometimes referred to as a loss that is "brought forward".
- Where there is a breach of continuity that would affect a net loss for a tax year, a post-breach net loss can be **carried forward to the subsequent tax year**.

Carrying forward to the breach income year

208. If there has been a breach of continuity in an income year for a tax loss component that arose in a previous income year, it may still be possible for at least part of the tax loss component to be carried forward to the pre-breach part of the income year.

209. The tax loss component can be carried forward to the extent that the loss company can use or share the loss in the pre-breach period. Any excess amount cannot be carried forward to the income year and will not be available in subsequent income years.

210. The loss company can use the tax loss component to reduce the loss company's net income for the pre-breach part of the income year.[139] The loss company will need to provide adequate financial statements to support its calculation of the net income in this part-year period.

211. This is illustrated in Figure 6 below. In Figure 6, a total of $10,000 can be carried forward to the income year because that is how much loss can be used in the pre-breach period ($6,000 can be used to reduce the loss company's net income in the pre-breach period and $4,000 can be shared in the pre-breach period as the profit company has net income in the period of $4,000). In the company income tax return (form IR4), $10,000 is entered as the "net losses brought forward" amount.[140] The remaining $2,000 of the tax loss component from the previous year cannot be carried forward to the income year and will not be available in subsequent income years.

212. Carrying forward a loss to a breach income year is also illustrated in Example 16 and Example 17.

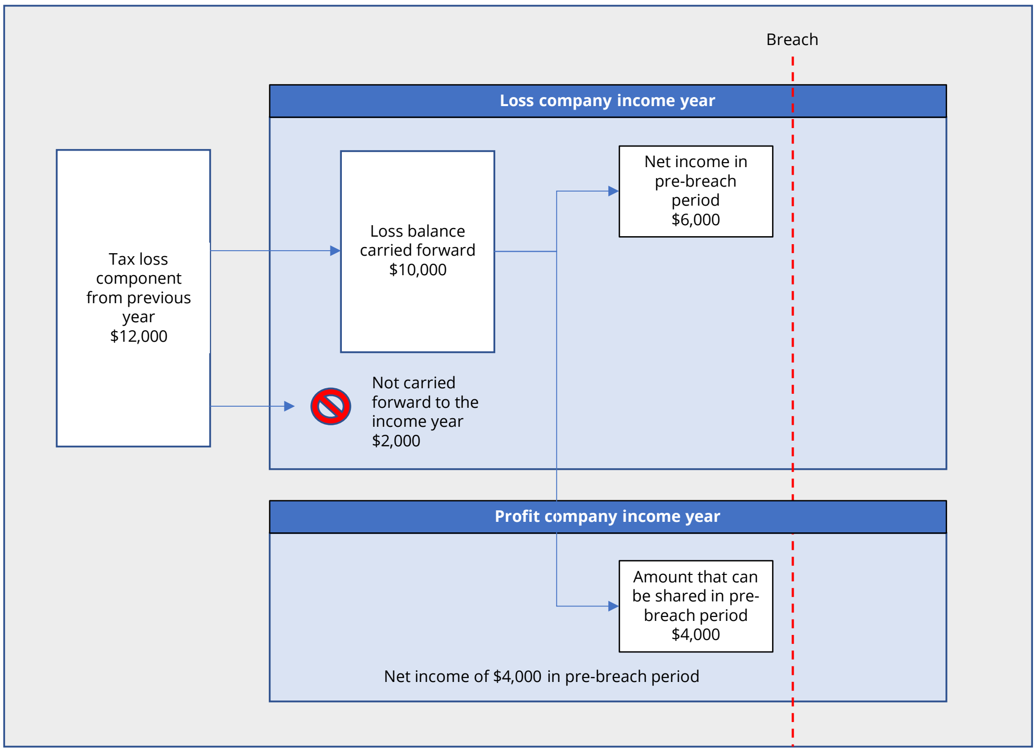
213. Sharing losses under the part-year rules is discussed below from [219].

[138] Remember that continuity is tested for each tax loss component. Different tax loss components may have different continuity periods and, therefore, be affected by different share transactions during those periods, for example.

[139] The loss company does not need to have net income for the tax year as a whole. For example, the loss company could have a net loss for the tax year as a whole, with net income in the pre-breach period and a larger net loss in the post-breach period.

[140] In the 2022 version of the IR4, this was field 28A.

Figure 6 – Tax loss component from a previous income year carried forward to breach income year



Example 16 - Carrying forward to the income year

Loss Co made a $100,000 net loss in the 2021 income year. This is Loss Co's only tax loss component. In the 2022 income year Loss Co had net income of $150,000. Loss Co has always had a standard balance date.

Shares in Loss Co were sold on 5 October 2021 (during the 2022 income year), which resulted in an ownership continuity breach for the 2021 net loss amount.

Loss Co prepares part-year financial accounts that show net income of $82,000 for the period from 1 April 2021 to 5 October 2021.

Loss Co can use $82,000 of the 2021 net loss to reduce its net income in the pre-breach period to zero.

Loss Co also identifies from part year accounts that it can share $10,000 of the 2021 net loss with another company under the part-year loss rules (discussed from [219]).

Therefore, in total, Loss Co can carry forward $92,000 ($82,000 +$10,000) of the 2021 net loss to the pre-breach period for the above uses. Loss Co therefore enters $92,000 as the "net losses brought forward" in field 28A of the 2022 company income tax return (form IR4). The remaining $8,000 of the 2021 net loss cannot be carried forward and will no longer be available.

Example 17 – Part-year net income, full year net loss

Loss Co made a $15,000 net loss in the 2013 income year, which it has been able to carry forward over the years. Loss Co has always had a standard balance date.

On 31 October 2022, shares in Loss Co are sold. This share sale results in ownership continuity for the 2013 net loss falling below the 49% continuity threshold.

In the 2023 income year, in the part-year period before the continuity breach, Loss Co had **net income** of $10,000. In the part-year period after the breach, Loss Co had a **net loss** of $50,000.

Loss Co can carry forward $10,000 of the 2013 net loss to the 2023 income year to reduce the $10,000 pre-breach net income.

The remaining $5,000 of net loss from 2013 cannot be carried forward and will no longer be available.

Carrying forward a post-breach net loss

214. Where a breach of continuity would affect a net loss arising in the income year of the breach, a net loss amount can still potentially be carried forward to the subsequent income year.[141] This net loss amount is the lowest of:[142]

- the net loss for the post-breach period;
- the net loss for the income year as a whole (the net loss for the income year as a whole may be lower if, for example, the company's profitability varies during the year); or
- zero, if the loss company has net income for the income year as a whole.

215. This is illustrated in Figure 7 and Example 18.

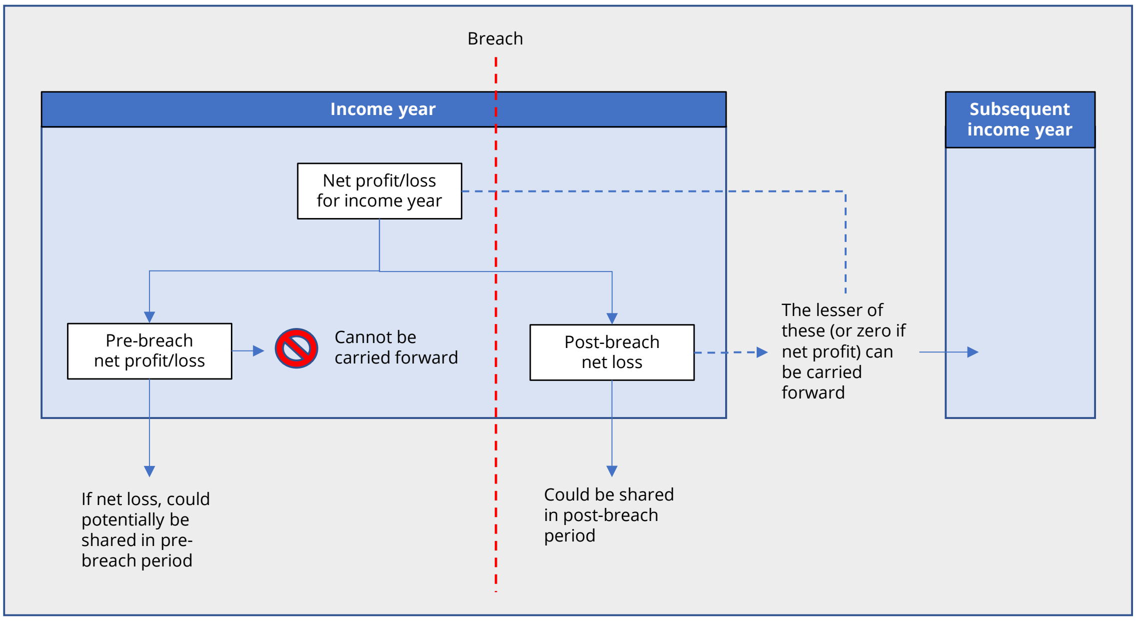
[141] Section IP 3(4).

[142] Section IP 3(5).

216. To carry forward a post-breach net loss from the tax year, the loss company would need to provide adequate financial statements to support the calculation of the post-breach amount.

217. Alternatively, the post-breach amount could be shared. Sharing losses under the part-year rules is discussed from [219].

Figure 7 – Carrying forward a post-breach net loss



Example 18 - Carrying forward a post-breach net loss

On 23 November 2022 (during the 2023 income year), Loss Co's majority shareholder sold his 80% share in the company. Loss Co has always had a standard balance date.

Based on part-year financial accounts, in the pre-breach period from 1 April 2022 to 22 November 2022, Loss Co had net income of $10,000. In the post-breach period from 23 November to 31 March 2023, Loss Co had a net loss of $30,000. Therefore, for the whole income year, Loss Co had a net loss of $20,000.

The change in shareholding on 23 November 2022 results in an ownership continuity breach with respect to the net loss for the 2023 income year.

Despite the breach, the part-year rules allow Loss Co to carry forward $20,000 of net loss (the amount carried forward is limited to the full year net loss as this is lower than the post-breach amount).

Pre-breach tax loss components not shared are not available going forward

218. If a loss company has a pre-breach tax loss component (for example, a net loss), this could be shared with a profit company and used by the profit company to reduce net income for a part-year period (see from [219]).[143] If the tax loss component cannot be shared, it will not be available going forward. This is illustrated in Figure 7.

Sharing losses under the part-year rules

Introduction

219. The part-year rules on sharing allow the following:

- A tax loss component from a previous income year may be shared with a profit company, to the extent that it is used to reduce the profit company's net income for a period before the breach, referred to in the legislation as a **common span** (discussed below at [226]).
- The net loss for the pre-breach period in the income year may be shared with a profit company; again, to the extent that it is used to reduce the profit company's net income for the common span.
- Part of a net loss for an income year may be shared where a group of persons establishes commonality between a loss company and a profit company part way through an income year. The net loss for the period after commonality is established can be shared and used by the profit company to reduce the profit company's net income for a corresponding period, which is also referred to as a common span.

Notification and adequate financial statements are required

220. To use the part-year sharing rules, the loss company must notify the Commissioner of the part-year treatment of the tax loss.[144] The loss company must give this notification by its extended return date or by a later date allowed by the Commissioner (this is the same notification timeframe that applies for sharing losses generally, see [68]).

[143] The loss company might also have tax loss components from previous income years that it can share in the pre-breach period.

[144] Under s IP 7.

221. The loss and profit companies must also provide adequate financial statements that calculate the part-year net loss and net income amounts, as discussed from [238].

Sharing can be limited by the profit company's full-year net income

222. Under the general sharing rules, the amount of a tax loss that a loss company can share with a profit company is limited by the net income of the profit company.[145]

223. In the part-year rules, the amount that can be shared is limited by the lower of the net income of the profit company:

- that is allocated to the part-year period (common span); or
- for the whole tax year.

224. The net income for the whole tax year might be lower due to seasonal differences in the profitability of a company's business, for example.

225. The amount that can be shared is not limited by the whole-year net loss of the loss company (where that is lower than the net loss calculated for the part-year period).

Sharing can be limited by the common span

226. The common span is a period that defines the:

- losses in the breach year that can be shared; and
- net income of the profit company that can be reduced by the losses.

227. Where there is a breach of continuity or commonality, there will be a pre-breach common span. This will be relevant to a tax loss component from a previous income year and to any net loss for the part-year period leading up to the breach.

228. There will also be a post-establishment common span where continuity or commonality is established part way through the income year. This will be relevant to the net loss for the part-year period following the breach or establishment of continuity or commonality.

229. Loss sharing in a pre-breach common span and a post-establishment common span is illustrated in Example 19.

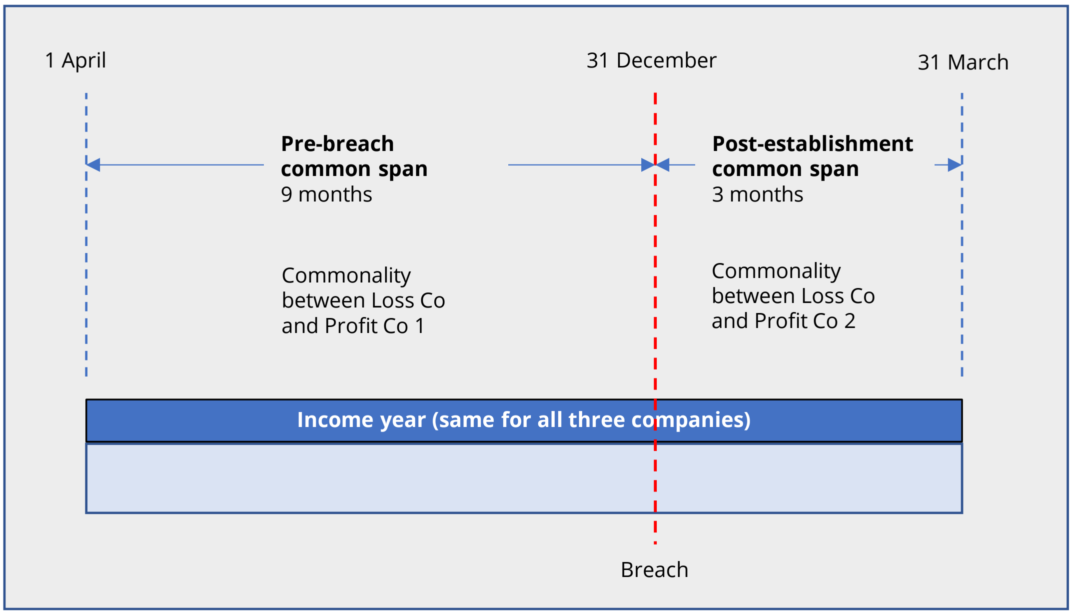
[145] Remember that a profit company's "net income" is modified for this purpose. See [45].

Part-year sharing where the loss and profit company have the same balance date

230. If the loss company and the profit company have the same balance date, the common span is the corresponding part of the loss company's income year and the profit company's income year, during which the commonality and continuity requirements are met.

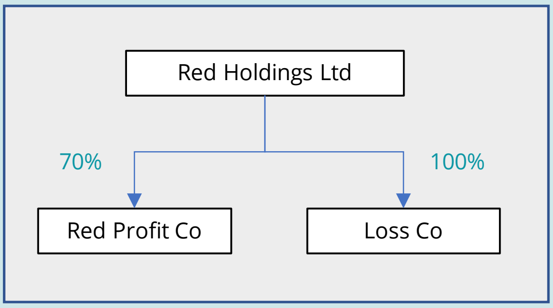
231. See Figure 8, which assumes that commonality exists between Loss Co and Profit Co 1 until a shareholding change at which point the commonality is breached. However, after the shareholding change, commonality is established between Loss Co and Profit Co 2.

Figure 8 – Common spans – loss and profit companies with the same balance dates

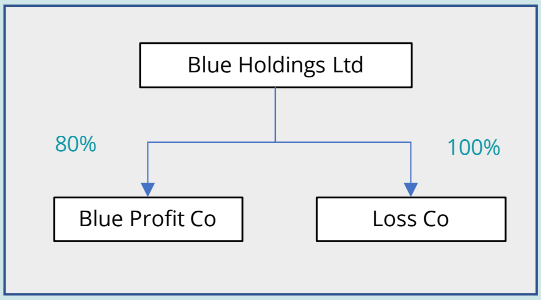


Example 19 - Application of part-year rules

Initially, Loss Co is 100% owned by Red Holdings Ltd. Red Holdings also owns 70% of the shares in Red Profit Co. The initial shareholding of Loss Co is shown below:



On 31 December 2022 (in the 2023 income year), Red Holdings Ltd sells all its shares in Loss Co to Blue Holdings Ltd. Blue Holdings Ltd also owns 80% of the shares in a company called Blue Profit Co. The new shareholding of Loss Co is:



This sale of shares breaches Loss Co's continuity for all its tax loss components. It also breaches commonality between Loss Co and Red Profit Co for all the tax loss components but establishes commonality with Blue Profit Co in relation to part of the net loss for the 2023 income year.

Loss Co, Red Profit Co and Blue Profit Co all have standard 31 March balance dates.

Loss Co has $500,000 of tax loss components from previous income years and a $100,000 net loss for the 2023 income year. Financial statements prepared for Loss Co show that $75,000 of the net loss arose in the pre-breach common span (1 April to 31 December) and $25,000 in the post-establishment common span (1 January to 31 March).

Financial statements prepared for Red Profit Co show that it had net income of $400,000 for the pre-breach common span. Financial statements prepared for Blue Profit Co show that it had net income of $30,000 in the post-establishment common span, but net income of only $20,000 for the 2023 income year as a whole.

Pre-breach common span

Loss Co can share $400,000 of tax loss components from previous income years with Red Profit Co in the pre-breach common span. This is the amount that is entered as the "net losses brought forward" in the company income tax return (form IR4). The other $100,000 of tax loss components from previous income years cannot be brought forward and will no longer be available.

Further, the $75,000 net loss from the pre-breach common span cannot be used as Red Profit Co does not have any more income in the pre-breach common span.

Post-establishment common span

Loss Co can share $20,000 of the $25,000 net loss from the post-establishment common span with Blue Profit Co. This is capped at the amount of Blue Profit Co's net income for the income year, which is lower than the net income for the common span.

Carried forward to next tax year

Loss Co can carry forward the remaining $5,000 of net loss from the post-establishment common span to the next tax year.

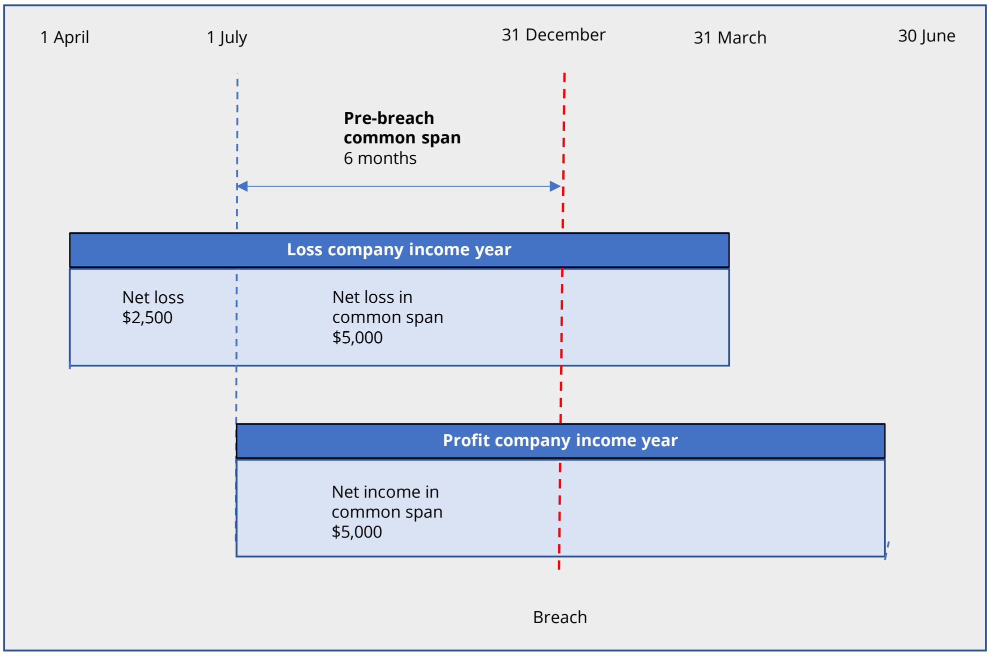
Part-year sharing where loss and profit company do not have the same balance date

232. If the loss company and the profit company do not have the same balance date, then the common span is the part of the **profit company's** income year during which the commonality and continuity requirements are met. This is illustrated in the following figures.

233. The following figures also illustrate some of the limitations on part-year sharing that are caused by differing balance dates. These scenarios assume that the requirements for sharing, including the provision of adequate financial statements, are met.

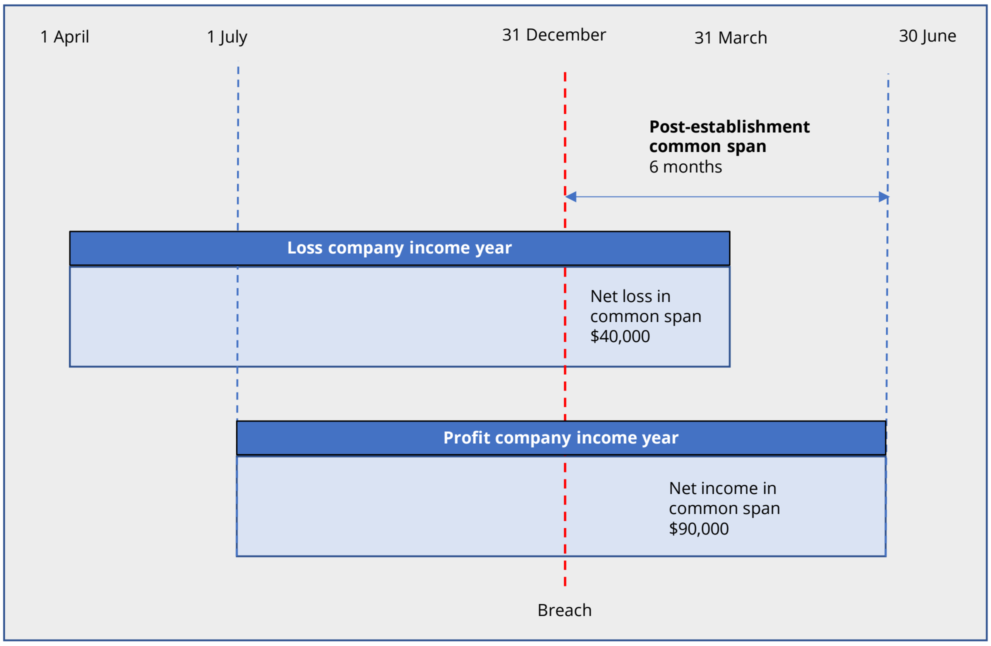
234. In Figure 9, $5,000 of the loss company's net loss can be shared and off-set against the profit company's pre-breach net income of $5,000. The $2,500 of net loss cannot be shared.

Figure 9 – Pre-breach common span where profit company has a later balance date



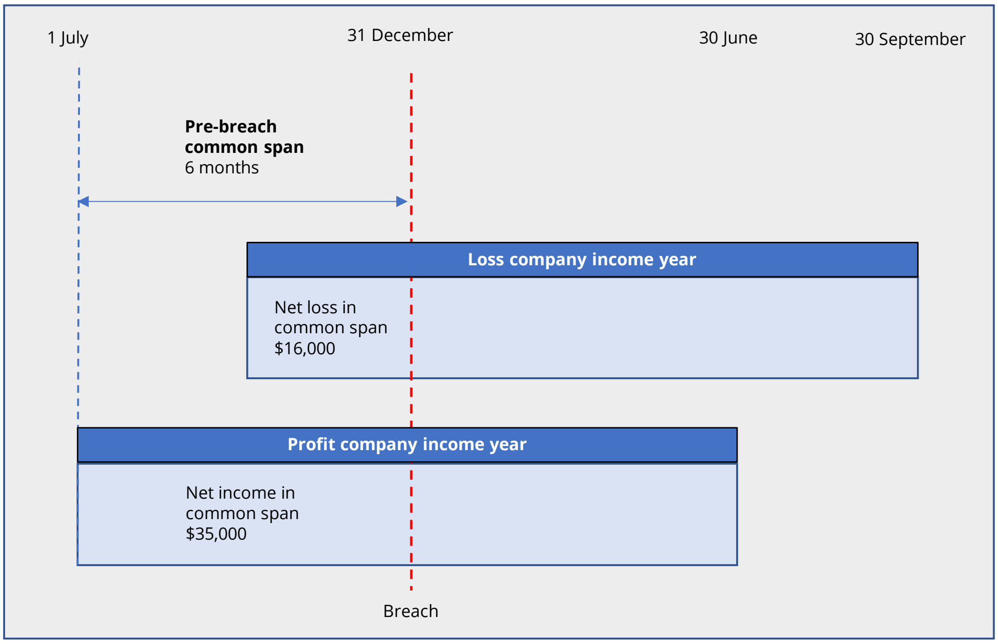
235. In Figure 10, the $40,000 of net loss can be used to reduce the profit company's net income from the post-establishment common span.

Figure 10 – Post-establishment common span where profit company has later balance date



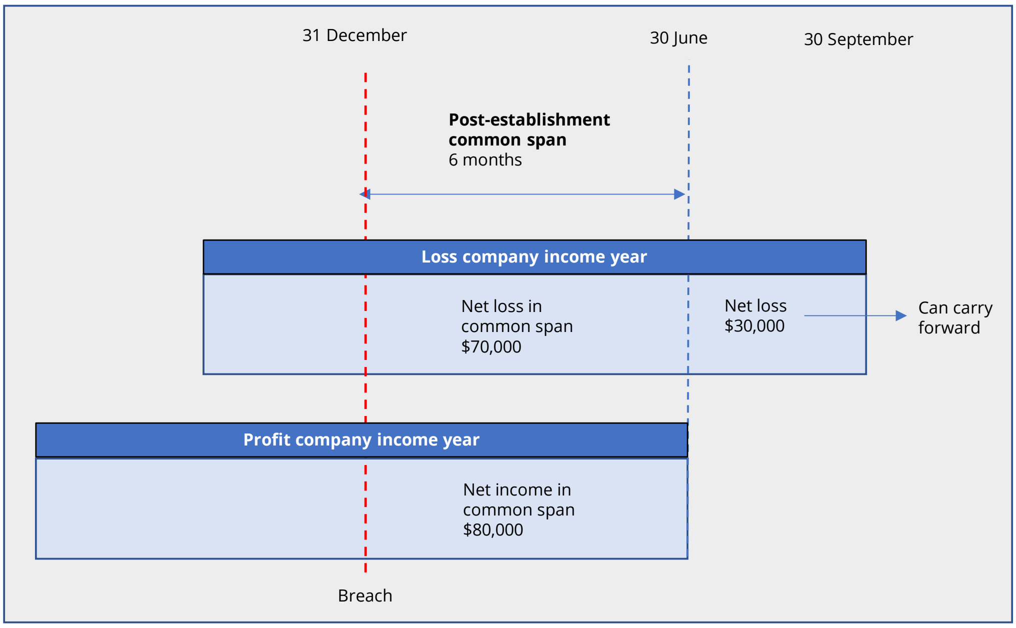
236. In Figure 11, in the pre-breach common span, the loss company's pre-breach tax loss of $16,000 can be offset against the profit company's $35,000 pre-breach net income.

Figure 11 – Pre-breach common span where profit company has an earlier balance date



237. In Figure 12, $70,000 of the loss company's $100,000 post-breach net loss can be offset against the profit company's $80,000 post-breach net income. The remaining $30,000 of net loss can be carried forward to the following tax year.

Figure 12 – Post-establishment common span where profit company has an earlier balance date



Adequate financial statements

238. For the part-year rules to apply, the loss and profit companies must provide adequate financial statements to support the allocation of the net loss and net income to the part-year periods.

239. Adequate financial statements are required for a loss company to:

- carry forward losses from an earlier year to the tax year to reduce its pre-breach net income;[146] the loss company must provide statements to support the pre-breach net income amount;
- carry forward a post-breach net loss for a tax year to the subsequent tax year;[147] the loss company must provide statements to support the post breach net loss amount;
- share a pre- or post-breach net loss with a profit company;[148] the loss company and the profit company must provide statements to support the loss company's net loss and the profit company's net income amounts in the relevant common span periods, as relevant; and
- share losses carried forward to the tax year with a profit company in the pre-breach period;[149] the profit company must provide statements to support its net income in the pre-breach common span.

240. The financial statements need to calculate net loss and net income amounts (as relevant) for the appropriate common span periods. It is important to remember that where a loss company and the profit company do not have the same balance date, the common span is defined by the profit company's income year and the breach date. For a loss company, it is not necessarily sufficient to merely determine the pre- or post-breach net income amounts (see Figure 9 and Figure 12).

241. The net loss and net income amounts must be determined on a fair and reasonable basis of attribution. This will generally require an attribution based on the timing of the income derived and the deductible expenditure incurred during the income year.

242. For practical guidance on preparing these financial statements, see "SPS 20/02: Loss offset elections between group companies", *Tax Information Bulletin* Vol 32, No 3 (April 2020): 18 at [26] to [28].

[146] Under s IP 3(2).
[147] Under (s IP 3(4).
[148] Under s IP 4(2).
[149] Under s IP 5(2).

Amended assessments

243. The Commissioner may amend an assessment of a loss company or a profit company.[150] Amendments to the income or deductible expenditure of a company can lead to consequential loss adjustments[151] for the company in assessments for subsequent income years, or in the assessments of other companies. Many different scenarios can arise because:

- the amended assessments could result in tax loss or net income being increased or decreased;
- sharing losses depends on both the level of the loss company's tax loss and the profit company's net income;
- the loss company may or may not have used or shared all its tax loss for a tax year;
- reduced tax losses may need to be reallocated among multiple profit companies; and
- where a tax loss has been transferred by subvention payment and the tax loss is reduced, the subvention payment may be treated as a dividend.[152]

244. Amended assessments are discussed in SPS 20/02.

245. The following sections discuss two scenarios and particular rules that apply in those scenarios: consequential adjustments where net losses have been shared with multiple profit companies and the effect of decreased tax losses on subvention payments.

Consequential adjustments where net losses have been shared with multiple profit companies

246. If after a reduction to a tax loss component, a loss company's adjusted tax loss for a tax year is still higher than the amount that has been shared with profit companies for that tax year, then no further action is required by the profit companies.

[150] Under s 113 of the Tax Administration Act 1994 (the **TAA**). Amendments to underlying assessments, for example, changes to income or allowable deductions, are generally subject to the disputes process. If an amendment is not agreed and other exceptions do not apply, the Commissioner is required to propose the amendment in a notice of proposed adjustment and follow the disputes process to determine whether to make the assessment.

[151] Consequential adjustments to losses are not subject to the disputes process. See s 89C(d), (g) and (k) of the TAA. These assessments simply reflect the underlying assessment of income and deductions for example, which will either have been agreed or made because of a direction from the Taxation Review Authority or a court.

[152] This can be avoided if the subvention payment is repaid.

247. However, if the adjusted tax loss for a tax year is lower than the amount that was shared, the amount by which the profit companies reduced their net income using the tax loss will require adjustment.[153]

248. Subject to one exception, the loss company can choose how the adjustment is allocated between the profit companies. The exception is that a loss company cannot allocate more than a proportionate amount of the adjustment to a profit company that, at the time of the allocation, is no longer a member of the group of companies. If the loss company does, the allocation will be disregarded.

249. The loss company must notify the Commissioner of the allocation within a notification period. This notification period is:

- six months after the date on which the Commissioner notifies the loss company that the adjustment is required; or
- a longer period agreed by the Commissioner.

250. If the loss company does not make an allocation, then the tax loss amounts shared with the profit companies are decreased in the same proportion as the loss company's tax loss has decreased (referred to as a **proportionate reduction**).

251. This is illustrated in Example 20.

Example 20 – Adjustment to tax loss shared with profit companies

Loss Co filed its return for the 2020 tax year claiming a net loss of $100,000. This was Loss Co's only tax loss component.

Loss Co shared $75,000 of the $100,000 net loss equally with three profit companies in the same group of companies. Each profit company reduced its net income for the 2020 tax year by $25,000.

Following an audit of the 2020 return in 2022, an amended assessment was proposed with a reduced net loss of $50,000. At the same time, the Commissioner notified Loss Co that the total amount of tax loss shared with the profit companies is greater than the adjusted tax loss proposed. Therefore, consequential adjustments are also proposed to the amount shared with the profit companies.

Loss Co agrees to the Commissioner's proposed adjustment and does not make any allocation of the amount by which the tax loss shared exceeds the adjusted

[153] Section IC 11.

tax loss. Therefore, the profit companies make a proportionate reduction as follows:

Loss Co	**Original**	**Adjusted**	**Adjustment**
Tax loss	$100,000	$50,000	$50,000
Tax loss shared	$75,000	$37,500	$37,500
Tax loss remaining	$25,000	$12,500	$12,500

Profit companies (Reduction in net income)	**Original**	**Adjusted**	**Adjustment**
Profit Co 1	$25,000	$12,500	$12,500
Profit Co 2	$25,000	$12,500	$12,500
Profit Co 3	$25,000	$12,500	$12,500
Total	$75,000	$37,500	$37,500

Note the proportionate reduction does not result in all $50,000 of the adjusted net loss being shared. A loss balance of $12,500 remains with Loss Co.

Variation – Loss Co instead allocates the adjusted tax loss

This variation has the same facts as above, except Loss Co chooses how to allocate the loss adjustment between the profit companies and notifies the Commissioner of the allocation within six months of the Commissioner's loss adjustment notification:

Loss Co	**Original**	**Adjusted**	**Adjustment**
Tax loss	$100,000	$50,000	$50,000
Tax loss shared	$75,000	$50,000	$25,000
Tax loss remaining	$25,000	$0	$25,000

Profit companies (Reduction in net income)	**Original**	**Adjusted**	**Adjustment**
Profit Co 1	$25,000	$25,000	$0

Profit Co 2	$25,000	$12,500	$12,500
Profit Co 3	$25,000	$12,500	$12,500
Total	$75,000	$50,000	$25,000

In this variation, Loss Co has fully allocated the $25,000 decrease in the tax loss between Profit Co 2 and Profit Co 3 and has shared all the adjusted tax loss leaving itself with a zero loss balance.

Effect of decreased tax losses on subvention payments

252. As discussed above, where a profit company pays a loss company a subvention payment for a loss, the subvention payment is treated as not being a dividend for the loss company (the payment could be a dividend if the loss company is a shareholder of the profit company). This protection from being a dividend applies only to the extent to which a tax loss is subtracted from the profit company's net income.[154]

253. Therefore, if an amendment is made and, consequently, less tax loss can be shared with the profit company, a subvention payment received by a loss company could be treated as a dividend.

254. However, if a subvention payment received by a loss company is treated as a dividend, the dividend is reduced to the extent that the subvention payment is repaid by the loss company within a notification period.[155] The notification period is:[156]

- six months after the date on which the Commissioner notifies the loss company that an adjustment is required to the tax loss shared with the profit company; or
- a longer period agreed by the Commissioner.

255. This is illustrated in Example 21.

Example 21 - Effect of decreased tax loss on subvention payment

Loss Co filed its return for the 2020 tax year on 31 March 2021 claiming a net loss of $100,000. This was Loss Co's only tax loss component.

[154] Section IC 5(5).

[155] The repayment can be made in any of the ways a subvention payment could be made. Payment has a meaning corresponding to "pay" in s YA 1.

[156] Section IC 11(6).

Loss Co shared the full $100,000 of net loss with Profit Co. In return, Profit Co made a subvention payment to Loss Co of $28,000. In other words, the $100,000 net loss was shared $72,000 by election and $28,000 by subvention payment. The subvention payment was made on 31 March 2021, the same day Loss Co filed its return. Profit Co used the loss to reduce its net income by $100,000.

Loss Co and Profit Co both have standard balance dates.

Loss Co is a shareholder in Profit Co. Section IC 5 applied to prevent the $28,000 payment from Profit Co to Loss Co from being a dividend.

However, on 1 September 2022, as a result of an audit of the 2020 return, the Commissioner proposed to amend Loss Co's assessment with a reduced net loss of $20,000.

On the same date, the Commissioner pointed out to Loss Co that the $100,000 net loss shared with Profit Co is greater than the $20,000 adjusted net loss proposed by the Commissioner.

Loss Co agreed to the Commissioner's proposed adjustment.

As a result, a consequential adjustment was also made to Profit Co's assessment on the basis that the net loss shared by Loss Co with Profit Co is only $20,000 rather than $100,000. This results in Profit Co having an additional $80,000 of net income.

Further, on 5 February 2023, within six months of the Commissioner's notification, Loss Co chose to repay $22,400 of the $28,000 subvention payment that it received from Profit Co (this reduced the subvention payment to $5,600, which is 28% of $20,000). As a result, the adjusted subvention payment is not more than the total loss shared with Profit Co and, therefore, no part of the subvention payment received by Loss Co is treated as a dividend. If Loss Co had not repaid any of the subvention payment it would have had dividend income of $8,000 in the 2021 tax year (the amount by which the original subvention payment exceeded the total loss shared).

Reporting obligations

Return requires information about minimum ownership interests

256. The company income tax return requires a loss company to enter the total lowest economic interests of shareholders during the income year.[157]

257. Note that the "total lowest economic interests" is an annual measurement that is required under the return to help keep track of ownership changes in the income year. This is relevant for determining how a net loss for the income year can be used. However, when determining whether ownership continuity or commonality has been maintained for a tax loss component from an earlier income year, it is necessary to have regard to ownership changes over the entire continuity or commonality period, which could span multiple years.

When a non-active company can be excused from filing returns

258. Sometimes a loss company will be non-active, and the question arises as to whether it needs to file an income tax return.

259. Unless the Commissioner requires otherwise,[158] a company is not required to provide a return of income for an income year if the company:[159]

- was a non-active company throughout the income year;
- has provided a completed non-active company declaration (IR433) to the Commissioner; and
- has been a non-active company at all times since making the declaration.

260. A company is non-active for an income year if throughout the income year, the company:[160]

- has not derived any income (other than interest derived on a bank account that does not exceed bank charges and other minimal administration costs totalling no more than $50);

[157] In the 2022 version of the IR4, this was question 41.

[158] Under s 43A(7) of the TAA.

[159] Under s 43A(1) of the TAA.

[160] Section 43A(2) and (3) of the TAA.

- has no deductions (other than statutory company filing fees, associated accounting or other costs, or bank or other minimal administration costs totalling no more than $50;
- has not disposed of, or been deemed to dispose of, any asset;
- has not been party to or continued with any transactions that, during the income year give rise to:
  - o income for any person;
  - o fringe benefits to any employee or to any former employee; or
  - o a debit in the company's imputation credit account.

261. Keep a record of the company's loss and imputation account balances before the company is excused from filing as this information will be needed if the company is reactivated.

Reactivation

262. If a non-active company that was excused from filing ceases to be non-active, the company must:[161]

- notify the Commissioner;
- provide the Commissioner with a completed non-active company reactivation form (IR434), which must include:
  - o the company's loss balance before it was excused from filing;
  - o the company's imputation credit account balance before it was excused from filing;
  - o the company's ownership before it was excused from filing;
  - o whether the shareholding ownership of the company (direct or indirect) has changes since it was excused from filing and the details of those changes; and
  - o whether the change in ownership would prevent it using any loss or credit balances.

[161] Section 43A(6) of the TAA.

References

Case references

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Sew Hoy v Sew Hoy [2001] 1 NZLR 391 (CA).

Westpac Securities NZ Ltd v CIR [2014] NZHC 3377.

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Other

Companies Act 1993: ss 107, 117, 124, sch 11 (cl 11)

Financial Reporting Act 2013

Tax Administration (Financial Statements) Order 2014

Tax Administration Act 1994: ss 43A, 89C, 113

Other references

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About this document

Interpretation Statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, Interpretation Statements are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further Status of Commissioner's advice *(December 2012)*. It is important to note that a general similarity between a taxpayer's circumstances and an example in an Interpretation Statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.