

# ***ACCT2331 Taxation notes - final exam***

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## ***Tax Losses (Individuals) Ch30(Div 36 ITAA97)***

Tax losses are carried forward into subsequent income years and claimed as a deduction.

**Tax loss = Deductions** (excl tax losses from a prior yr) – [**Assessable income + Net Exempt income**] (s 36-10 ITAA97)

**Net Exempt Income** (s 36-20 ITAA97) = Exempt income – non-capital losses/outgoings incurred in deriving the exempt income – foreign taxes payable on the exempt income

The following items are **not deductible** if you are in a tax loss position (per s26-55 ITAA97). Only partially deductible to the extent that there is no tax loss created.

- **Gifts/donations** (Div 30 ITAA97)
- **Personal Super contributions** (s290-150)
- **Pensions, gratuities, retiring allowances** (s25-50)
- Conservation covenants (Div 31 ITAA97)

Assessable income (ie sales)	220,000	
Less: allowable deductions–		
• business expenses	100,000	
• gift expenses	3,000	
• superannuation expenses	<u>10,000</u>	<u>(113,000)</u>
Excess assessable income	107,000	
2011/2012 net exempt income	6,000	
Less: 2010/2011 prior year tax loss	<u>(45,000)</u>	<u>(39,000)</u>
TAXABLE INCOME for 2011/2012		<u>\$68,000</u>

**When claiming tax loss from prev year as a deduction,**  
must apply tax loss against:

- 1) Net Exempt income; and then
- 2) Assessable income.

Bankrupts generally prevented from claiming tax losses incurred prior to bankruptcy

## ***Tax Losses (Companies – Carry forward) Ch30***

Can choose the amount of a tax loss to deduct in an income year, subject to first having to apply the loss against their net exempt income

If deducting the tax loss this year would result in excess FCTO's (refundable) this year, can only deduct the amount of tax losses that would result in zero excess FCTO's/minimise excess FCTO's.

- If, disregarding its tax loss, the entity would have “excess franking offsets” for the year, it must choose to deduct a nil amount (s36-17(5)(a)), and
- If, disregarding its tax loss, the entity would not have “excess franking offsets” for the year, it must not choose an amount that would result in it having excess franking offsets for that year (s36-17(5)(a))

See EG: p732

Need to work backwards, to determine how much of prior tax loss you can deduct (tax loss = \$150), but can only deduct \$100 so that you can use up your FCTO's.

	Step 1	Step 2
Assessable Income	200	200
Deductions	150	100
Taxable Income	50	100
Tax on TI	15	30
Less: FCTO	30	30
Tax Payable	15	0

## ***Company & Trust Carry-forward Tax Losses Ch31***

Subdiv 165-A: Companies can only claim deductions for their tax losses if they either:

- 1) Satisfy a “continuity of ownership” (**COT**) test (s165-12 ITAA97)
  - Fulfilled if, at all times during the “ownership test period” (start of loss yr -> end of income yr in which you're claiming the deduction), the same persons beneficially owned (either directly or indirectly) shares in the company with:
    - i. Rights to more than 50% of the voting power, dividends, and capital distributions of the company
- 2) Pass a “same business test” (**SBT**) (s165-210, s165-13 ITAA97)
  - Requires the company to carry on “the same business” as it did before the “test time” (income year that you're claiming the deduction)
    - i. “Same business” means “identical business” rather than merely the “same ‘kind of business’” (Avondale Motors 1971 -> sold motor parts -> changed ownership -> diff name, premises, directors, employees, suppliers, customers)
    - ii. The mere fact that changes have occurred after change in ownership doesn't necessarily result in different business (Lilyvale Hotel 2009 -> hotel operated & managed by another company -> hotel taken over by another company and operated & managed by them -> not a different business)

