

Chapter 7

Schedule 6—Removal of the same business test cap

Overview

7.1 Schedule 6 of the bill seeks to amend the company loss recoupment rules in the *Income Tax Assessment Act 1997* to remove the \$100 million total income cap on the same business test.

Background and summary

7.2 Under the company loss recoupment rules, a company is only able to claim deductions for prior year losses if it satisfies the continuity of ownership test or the same business test.

7.3 The continuity of ownership test broadly requires that the shares carrying more than 50 per cent of all voting, dividend and capital rights be beneficially owned by the same persons at all times during the ownership test period. The ownership test period is the period from the start of the loss year to the end of the income year in which the loss is to be deducted.

7.4 The same business test requires a company to carry on the same business in the income year a loss is claimed as a deduction at the 'test time'. The 'test time' is either the point in time that the continuity of ownership test is no longer satisfied, or the start of the income year when the loss is incurred where it is not practicable for the company to show that it has satisfied the continuity of ownership test. Currently, companies with total income for an income year in excess of \$100 million are denied access to the same business test for losses incurred on or after 1 July 2005.

7.5 These amendments seek to remove this \$100 million total income cap on the same business test. The amendments are to apply from 1 July 2005 so that:

- companies with total income in excess of \$100 million that satisfy the same business test are not denied access to losses incurred since 1 July 2005; and
- companies do not incur additional compliance costs by having to separately keep track of losses incurred since 1 July 2005.

7.6 In summary, below is a comparison of key features of the current and proposed new laws :

<i>Current law</i>	<i>Proposed new law</i>
<p>A company can deduct prior year losses that are incurred on or after 1 July 2005 in an income year if:</p> <ul style="list-style-type: none"> • the company satisfies the continuity of ownership test; or • the company's total income for the income year is \$100 million or less <i>and</i> it satisfies the same business test. 	<p>A company will be able to deduct prior year losses that are incurred on or after 1 July 2005 in an income year if:</p> <ul style="list-style-type: none"> • the company satisfies the continuity of ownership test; or • the company satisfies the same business test.

7.7 This measure will have the following revenue implications¹:

<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>
-\$15m	-\$40m	-\$50m	-\$70m

Intended benefits of changes

7.8 These amendments are in response to concerns raised by business and professional groups and would be beneficial to taxpayers as they would make it easier for companies to deduct prior year losses by removing the \$100 million total income cap on the same business test.²

Issues in relation to the schedule

7.9 At the hearing Senator Murray expressed some concern about Treasury's estimate of the revenue implications of lifting the \$100 million cap on the same business test.³ In the Explanatory Memorandum, Treasury estimates that removing the cap will result in a revenue loss of \$175 million over the four years from 2007–08 to 2010–11.⁴ At the hearing, Treasury noted that they were 'reasonably confident of that costing', in part because:

When the same business test cap was brought in there was a relaxation of the continuity of ownership test, so basically it was easier for some

1 EM, p. 7.

2 EM, pp 141 and 143.

3 Senator Murray, *Proof Committee Hansard*, 28 August 2007, p. 5.

4 EM, p. 7.

companies to be able to claim losses applying the continuity of ownership test, which meant that fewer companies needed to rely on the same business test.⁵

5 Mr Anthony Regan, Manager, Company Tax Unit, The Treasury, *Proof Committee Hansard*, 28 August 2007, p. 5.

