

2016 National Innovation and Science Agenda

of the

Commonwealth of Australia

Treasury Department: Access to Company Losses – Draft Legislation

Submission Paper by



FRANKSONS

The Franksons Group

Date: 19 April 2016



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***NATIONAL INNOVATION & SCIENCE AGENDA EXPOSURE DRAFT
– ACCESS TO LOSSES***

We thank the Commonwealth Treasury for providing us with the opportunity to comment on the *Exposure Draft – Access to Company Losses*, released as part of the Australian Government's National Innovation and Science Agenda 2015.

We hope to see continued developments in this area and that pragmatic and meaningful progress in policy will help investment in Australia will be forthcoming in the future.

It is paramount that Australia continue to diversify its economy and develop new technology across industries, from new processes, efficiencies and capabilities in both traditional industries such as mining and agriculture, to entirely new technological arenas such as virtual and augmented reality, artificial intelligence, nanotechnology.

Franksons would also like to thank MIDA, the Multi-disciplinary Innovation and Development Association (www.mida.org.au), with whom some of its members share common association and interests.



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About Franksons

The Franksons Group is a strategic consulting firm, specialising primarily in new and emerging technology businesses across South-East Asia, Europe and North America. Franksons also invests in new technology and resource projects around the world.

Therefore, much of Franksons work is affected both directly in our projects that we own and indirectly through our clients. Franksons also provides legal and visa services to international businesses, including tax advice, structuring and litigation.

With staff in our team who have experience at companies such as Deloitte, EY, Commonwealth Bank, and McKinseys, and in countries ranging from USA, UK, Asia and Australia, Franksons has regularly advises both business and government in Finance, Law & Policy, and Technology.

We would like to thank our team who assisted with research and preparation of this submission: Sal Rahmaty, Kimberley Grellinger, Raihan Hossain, Cecilia Tran and Sahar Radfar. We would also like to thank our affiliates Ali Yaseen and Ala Al-Assadi for their contributions as well.

For more about the Franksons Group, please visit www.franksons.com.



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Main Contributors

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Francois Brun is head of the Franksons Group, a strategic consulting and venture capital firm since 2009. His expertise is in technology, mining and property industries. He previously worked in corporate auditing and advisory since 2004 for firms such as Deloitte and Ernst & Young, in Australia, the USA and the UK. He has advised government on various policy areas relating to international business, taxation and economic development. He has also previously lectured in taxation and commercial law. He has bachelor degrees in Accounting and Law, and a Masters in Law. For more information, see [Francois' LinkedIn Profile](#).

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Mr Rahmaty has over 15 years experience in management consulting in USA and Canada, specialising in business start-ups and business expansions. Sal heads Franksons operations in North America. He has assisted numerous companies as director, operational manager, strategic consultant and venture capitalist. Sal has numerous degrees in business and information technology, and has taught in business schools across Canada. For more information, see [Sal's LinkedIn Profile](#).

Ali Yaseen

Mr Yaseen has several years of experience in technology consulting and currently works in-house for a large ASX-listed company advising on strategy and growth. He also assists with their submissions on public policy issues in the Transport Law and Competition Law space. Mr Yaseen has a Bachelors of Commerce (Economics & Business Analytics) from the University of Sydney, Australia. For more information, see [Ali's LinkedIn Profile](#).

Ala Al-Assadi

Ala Al-Assadi has several years of work in the construction industry working for large construction and property development companies. Ala's approach of forward-thinking in the construction industry gives Ala a valuable insight into both business and innovation and the relationship between them. Ala has a Bachelors of Construction from the University of Western Sydney.



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Franksons' Submissions

Introduction

Franksons would like to thank Treasury for the invitation to make submissions in relation to the Exposure Draft. We note our submissions point to various elements of the Explanatory Memorandum as well as the proposed amendments, in addition to our own suggestions for legislative changes. Aspects of the proposed legislation are not specifically addressed, but referred to in the context of alternatives provided.

Background

The Australian Federal Government has outlined its plans for increasing access to company losses by business as a means to encouraging innovation, as noted on the National Innovation and Science Agenda¹ website:

- *'the current 'same business test' will be relaxed to allow businesses to access past year losses when they have entered into new transactions or business activities*
- *a new and more flexible 'predominantly similar business test' will be introduced*
- *under this 'predominantly similar business test' companies will be able to access losses where their business, while not the same, uses similar assets and generates income from similar sources.'*

Furthermore, the rationale for this plan can also be understood from the NISA definition as:²

"Loss making companies can be deterred from seeking out new business opportunities for fear that they will lose access to valuable past year losses.

The ability to offset losses against other profits is particularly important for small innovative companies because they are often cash-poor and have less diverse income streams in comparison to well established businesses.

¹ NISA website, <http://www.innovation.gov.au/factsheets/increasing-access-company-losses>, viewed 17 April 2016.

² Ibid.



This measure will encourage entrepreneurship by allowing loss making companies to 'pivot' and seek out new opportunities to return to profitability."

Relevantly, the Exposure Draft for the legislation, points to various aspects of the above in terms of implementation, in addition to other minor changes sought to support or supplement innovation throughout the tax system.

Submissions

1. Franksons's submissions will speak to aspects of the legislative provisions, and in addition provide critical analysis with a view to suggested outcomes of the proposed legislation, as well as possible alternatives that could be implemented with equal or greater ease.
2. Franksons raises issues in regards to the changes in the Same Business Test ("SBT") but also raises these issues in the context of the absence of any changes in the Continuity of Ownership ("COT") Test.
3. Franksons also questions the actual impact that the legislation will have on Australia's culture, psyche and attitude toward innovation.

"Same or Similar" Business Test

4. Franksons submits that the criteria of the Similar Business Test does not go far enough to promote innovation, particularly for small-cap enterprises. Principally because whilst the new test is broader, it also requires a cumulative consideration. i.e. to meet the test, the factors must be considered by way of "having regard to..." in addition to the use of the word "and" suggests more consideration to all factors, rather than an "or" requirement.
5. Franksons submits that it is highly likely that the new legislation and new SBT Test will be open to broad legal interpretation, and as a result both abuse and controversy



leading to more disputes around what extent the Similar Business can be stretched and applied to.

6. As the Explanatory Memorandum sets out on page 10, the factors considered are:

- *the extent to which the assets (including goodwill) that are used in its current business to generate assessable income were also used in the company's former business to generate assessable income;*
- *the extent to which the sources from which the current business generates assessable income were also the sources from which the former business generated assessable income; and*
- *whether any changes to the former business are changes that would reasonably be expected to have been made to a similarly placed business.*³

7. In practical terms, it is debateable how much utility any new product innovation, start-up business, or disruptive technology could actually benefit from this because of the critical element of “Pivoting” whereby start-ups change their original product offering and literally ‘pivot’ into a new direction. When this occurs it is substantially different to the “former business” and in effect all of the above criteria are insufficient to support this. This would be particularly so with “Platform Pivots”, “Business Architecture Pivots” and “Technology Pivots”.⁴

8. Franksons submits that Pivoting needs to be considered in any carry forward loss provisions, particularly in the context of the current business environment, but arguably more so in terms of future trends and developments in business. The pace of change in the business world, and even more so in technological development requires jurisdictions to have flexible and fluid tax systems, both in substantive provisions and administration.

³ Commonwealth of Australia, *Tax and Superannuation Laws Amendment (2016 National Innovation and Science Agenda) Bill 2016: Access To Losses*, p 8.

⁴ Forbes website, <http://www.forbes.com/sites/martinzwilling/2011/09/16/top-10-ways-entrepreneurs-pivot-a-lean-startup/#28aec16e5829>, viewed 19 April 2016.



9. The example below illustrates some of the issues that some entities may have with the interpretation and application of the new test.

Example: XYZ Company is a mining company and its business is as a primary silver miner that extracts silver ore from its mining operations.

The main metal by-products of its mining process are Zinc (Zn), Nickel (Ni), Gold (Au) and Copper (Cu).

Another by-product achieved by a separate process, is Sulphur Dioxide (SO₂) which could be used for bleaching, fumigant and food preservatives and in purifying petroleum products.

The company uses the same source for the final products, but only some of the same initial assets, and could not have expected this new assessable income. Arguably XYZ would fail the new broader similar business test.

10. Franksons submits that However, the “Source” of both processes are the same. The assessable income generated is done so by different processes and potentially different assets.
11. The change is not necessarily reasonably expected but in terms of encouraging innovation, it is highly persuasive that the business is not similar to the original business and would in fact discourage innovation because the company would be concerned that the company’s losses would not be rolled over into the new “similar business”.
12. The Explanatory Memorandum illustrated a few examples which support the argument that innovative business in the small and medium enterprise market would have difficulty gaining benefit from the new test on the basis that the change in business would be greater than the similar test would allow.



Furnish Art researched and developed its own mattresses (and applied to register its intellectual property with IP Australia) and it outsourced the manufacturing to a local factory.⁵

13. The example demonstrates the lack of breadth and flexibility that the new test will have. A change from a furniture retail business to a new type of mattress is on the scale of similarity a very incremental change, and hardly reflective of the changes that occur in the innovation process for disruptive technologies.
14. Franksons submits that the reality of many start-ups, is that they are required to “Pivot” as mentioned previously, and this results in vastly different outcomes both in products, processes and in many cases the nature of the business.⁶
15. As a general proposition, Franksons submits that a repeal of the current SBT and COT regimes to require less complex criteria would be able to achieve more flexibility for start-ups and business innovating to gain the benefit from what are often seismic shifts in their design and innovation process, which often lead to changes in the nature of the business. This could be tempered by limitations or restrictions on how much can be claimed for carry-forward losses (discussed later).
16. The notion of a more simplified system is supported by way of example in one of Franksons’ own self-funded project. Without divulging commercially sensitive information, one project that involved various aerospace technology, was seen to be a project purely focused on that particular business as the nature of the business, but also integrated new communications technology, new Infra-Red and audio-visual technology as ancillary projects, in addition to aeronautical engineering. During the course of the project, the direction of the business has since pivoted to focus on automated software programming as the potential main product and new nature of the business. As result, even the similar business test, may at best, be stretched.

⁵ Explanatory Memorandum, Example 1.1 on Page 11.

⁶ Yinxiang Hong, ‘Innovation in China’s Economic Development Theory’ revised chapter of *The China Path to Economic Transition and Development*, 2 April 2016, pp 213-226.



17. As a further demonstration, Innovation.gov.au presents a practical example of how the new Similar Business Test will work.⁷

How it will work in practice

RePoly Pty Ltd has developed a way to turn algae into biodegradable plastic. It incurs large initial expenditure on manufacturing equipment. In the first three years of operation, RePoly makes a loss.

To ensure its viability, RePoly brings in an early stage (angel) investor who contributes additional capital. This results in a majority change in ownership.

After this change, RePoly seeks to expand its business in an effort to reach profitability. This expansion allows RePoly to make a profit in year four. RePoly seeks to offset its past losses against current year profits.

Possible treatment under existing law

RePoly would fail to meet the 'same business test' and access to past losses would be denied.

Possible treatment after new measure introduced

RePoly would pass the 'predominantly similar business test' because it makes use of the same assets, generates the majority of its income from the same business, and took advantage of an opportunity a similarly placed business would take advantage of. As a result, RePoly would be able to access past year losses.

Source: Innovation Australia, www.innovation.gov.au⁸

18. Franksons submits that modern business environment is that business can change rapidly, and in doing so attain changes in their structure, and ownership, and the nature of their business. The simplified example above does not lend itself to the complexities in structures and contractual relationships that businesses undertake – partly because of the rapid pace of business, the impact of technology, the nature of globalisation, but also partly because of the unnecessarily burdensome and sometimes excessive regulatory environment that business has to operate in.

⁷ Innovation Australia website, <http://www.innovation.gov.au/system/files/case-study/Factsheet%203%20-%20Increasing%20access%20to%20company%20losses.pdf>, viewed 16 April 2016.

⁸ Ibid.



19. To further highlight the above points, YouTube, a now well know global brand, was originally very different in its original design.⁹

YouTube Case Study: Steve Chen, Co-founder of YouTube recently commented on the Pivot that occurred in YouTube, which was originally started to attract people to online dating by putting up a video of themselves.

This process of trial and error re-working and re-engineering the design of the platform affected the very nature of the business such that it was substantially different both internally and externally, than when it finally became adopted by the market. YouTube's product in fact was not even a paid product anymore, the business had substantially changed.

The business model itself was not even directly profit generating (YouTube still makes Google a loss each year). This illustrates the point that startups (or any business that wishes to survive) will change over their life, but particularly more so in the highly innovative spaces and during the early-staged, pre-profit, development phases.

20. Another example is Flickr is the popular photo sharing website Flickr.¹⁰

Flickr was originally part of a development of an online role-playing game from gaming startup called Ludicorp.

Caterina Fake and husband Stewart Butterfield identified that they had developed a solution to a much larger problem in simplifying photo sharing on the web.

They decided to scrap development of the game, and focus instead on the larger potential of file sharing. It had a broader appeal, broader market and they effectively 'pivoted' the business drastically from its previous business.

Ludicorp never actually published a game, and Flickr was purchased by Yahoo! in 2005 for an undisclosed sum.

⁹ The Guardian Newspaper, <https://www.theguardian.com/technology/2016/mar/16/youtube-past-video-dating-website>, viewed 19 April 2016.

¹⁰ Mashable website, <http://mashable.com/2011/07/08/startups-change-direction/#lqiy.eRjssq3>, viewed 19 April 2016.



21. In view of the previous examples, it would be questionable whether the benefit of a change in the Same Business Test (“SBT”) would in fact achieve greater innovation for start-ups.
22. Franksons also submits that the Same Business Test and the suggested changes to a Similar Business Test only serve to bring Australia on par with other jurisdictions around the world.¹¹ However, it maybe preferable to legislate in a fashion that puts Australia ahead of the world, even leading jurisdictions, such as the United Kingdom that use “carry-back provisions” which would be very beneficial to start-ups and encourage innovation.¹²
23. As discussed later in Paragraph 27 of this paper, a limitation on carry-back and carry - forward losses exists in other jurisdictions. The example of Canada may to some extent provide ideas for limitations on the amount of deductible losses (and therefore those that can be attributed to future years) for certain Farming and Fishing activities.¹³ Franksons submits that no such specific provisions be applied to Farming, Fishing or any agriculture business, however a similar blanket limitation could be applied to prevent inappropriate and disproportionate use of the carry-forward losses legislation.

Alternative Legislation

24. Franksons submits that the best way to increase innovation, and in particular the culture of innovation, is to give people the best opportunity to do so. Tax Policy regulates the psyche of a populace in a way that higher taxes inherently reduce the incentive to invest in new capital, in new jobs – and in new ideas.

¹¹ Australian Treasury website, <http://www.treasury.gov.au/Policy-Topics/Taxation/NISA/Access-to-company-losses>, viewed 19 April 2016; *Australian Government Tax White Paper 2015*, p 89, http://bettertax.gov.au/files/2015/03/TWP_combined-online.pdf, viewed 19 April 2016.

¹² UK HMRC website, <https://www.gov.uk/guidance/corporation-tax-calculating-and-claiming-a-loss>, viewed 19 April 2016.

¹³ Canadian Revenue Agency website, <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/rtrn/cmpltng/ddctns/lns248-260/252-eng.html>, viewed 19 April 2016.



25. As a standing proposition, the carry forward of company losses should be expanded to allow for greater flexibility and change, beyond that of a “similar business test” which in its current proposed form, in lieu of a change to the Continuity-of-Ownership Test (discussed later in this paper at Paragraph 30), would only benefit larger, often multi-national corporations without providing a benefit to the Australian innovation community or the broader Australian society.
26. The end result will be the move of Australian companies and Australian ideas to overseas jurisdictions with less tax administration, less tax compliance and/or lower taxes. And thus would be the short-lived existence but very rapid end of the “Innovation Boom” and the political capital that came with it.
27. Understandably a more flexible and less strenuous system would lend itself to abuse. The suggestion in relation to carry forward losses would be to provide either:
- a. A limit on the quantum of company losses that could be carried forward or carry-back losses should those provisions be considered (e.g up to an amount of \$500,000); and/or
 - b. A limit on the size of the entity or the entity’s related parties whose future year income is over a particular threshold (e.g. future income of the taxing entity or tax consolidated group in the amount of \$1,000,000).
28. The above measures would limit the amount of any misappropriation of the system, increase the simplicity and ease of compliance, and most important of all, encourage smaller entities to gain the benefit of a change in business operations or the nature of their business.
29. Again as discussed already, a more flexible and less complex system for carry forward losses, and implementing carry-back provisions, would give Australia an edge in the international business market, in innovation, and generate more tax revenue in the future.



Continuity of Ownership Test

30. The 2015 Australian Government Tax White Paper did appear to address, at least to some extent, the consideration of the co-existence of the Same Business Test and the Continuity of Ownership Test, and submissions were made in relation to this at the time.

31. In its response to the *Re: Think Tax Discussion Paper* in 2015, The G100 group of Chief Financial Officers of the largest 100 companies in Australia, commented on the Same Business Test, citing:¹⁴

*“Whilst we appreciate that the loss utilisation rules were developed to prevent “loss trading” and loss “multiplication” by applying the Continuity of Ownership Test (“COT”) and the Same Business Test (“SBT”) carry forward losses, **these tests are overly complex.**”*

32. Further to that point, Franksons would add that both of the tests are not only overly complex but also unnecessarily complex in achieving their ultimate purpose: reducing the risk of abuse of the system, principally, where a business has run a loss and seeks to recover a tax asset from that loss in the future. However, in the context of innovation and disruptive technology, the more complex the regulatory environment, the less likely business will be able to adapt and change. This is a fundamental principle of business and an example can be provided from nature.

33. To use the example of nature, where a species of insect is subject to overpopulation due to the abundance of food and water, the larger and less mobile insects of the species eat more, become more comfortable and as a result more incapable of changing and adapting, whilst the smaller but proportionately stronger insects are more adaptive – complex and top heavy equates to weakness; adaptive and agile equates to strength. Therefore, it is arguable that policymakers have in some instances fell victim to ‘not seeing the wood for the trees.’

¹⁴ G100 *Submission on the Tax White Paper*, http://group100.com.au/wp-content/uploads/2015/03/sub_20150602_treas_tax-reform.pdf, viewed 19 April 2016.



34. Furthermore, by way of comparative analysis, Singapore in its carry loss regime provides for carry-back and carry-forward of losses, as well as transfers of losses, particularly within group structures (See Appendix A). Whilst Singapore's approach may seem slightly complicated from an administrative perspective, the practicalities of a tax friendly jurisdiction give rise to a better innovation environment and consequently a better economic environment as well.
35. The same can be said of Hong Kong, and the converse can be seen to some small extent in Malaysia and Taiwan, both of which may draw some criticisms, certainly in more recent times of lacking policies toward innovation and economic progress.
36. As noted in Appendix B, a comparative analysis in the *Final Report on the Tax Treatment of Losses*¹⁵ by the Australian Treasury Department highlighted the parity achieved between Australia's Continuity of Ownership provisions and the rest of the OECD countries.
37. Relevantly, some of the jurisdictions mentioned in Appendix B also have significantly lower corporate tax rates and special concessions for income tax for certain industries which encourages greater levels of investment both domestically and from overseas. As a result, their net aggregate tax revenue will as a general principle always be higher as a proportion of their investment and economic activity.
38. To use Singapore as an example again, Corporate Income Tax is 20%, a third lower than Australia, but in addition to that the first \$90,000 in income is given a 50% discount or exemption (See Appendix C). This is critical to a new business, a startup, a business trying to innovate and gain a foothold as it starts to generate profits.
39. Conversely, Australia has a 28.5% tax rate for small companies and essentially provides a painful near one-third extraction of profit at a time when the business is

¹⁵ Australian Treasury Department, *Final Report on the Tax Treatment of Losses*, Chapter 4: Loss carry forward, 2012.



just starting to become profitable and will face additional economic pressures in the short-to-medium term.

40. The COT along with the corporate tax regime and other taxes facing business do not exist in a vacuum. They are considered cumulatively when a business decision to invest in a new project, new product, new innovation, new business or new idea is being considered. The alignment of tax laws with incentives to innovate need to be clear and cogent with one another.
41. Additionally, the Continuity-of-Ownership Test and its ultimate purpose is somewhat paradoxical in its convergence with the objective of encouraging innovation for the simple reason that new investment, leading to a change in ownership, is a critical part of an early-stage start-up. The mere presence of the COT discourages start-ups to enter into a venture, whether on their own or with share-based, equity partners, or whether to consider the possibility of external investment from a new party in the future.
42. Notwithstanding proposed legislation regarding the New Tax Incentive for Early Stage start-ups, Franksons would submit that less legislation, effectively some repeals of these existing laws would be the best way to encourage genuine, grass-roots innovation.
43. Franksons submits that the Continuity-of-Ownership Test be modified to reflect the change in ownership that so often occurs as part of the innovation process which in some respects is sub-process of the business evolution process, whereby new investment and new innovation often occur in varying order. A more flexible approach to COT and SBT, perhaps with consideration of limitations or restrictions on the quantum of losses that can be carried forward would be a workable solution.



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Final Remarks

44. Whilst Franksons welcomes the sincerity and enthusiasm of Treasury, Australia runs the risk of falling behind the rest of the world; complacently resting on its vast natural resources and appeal as a tourist destination. Such complacency is further hindered by political weakness and terminal bureaucracy. These are notions diametrically opposed to the spirit and intendment of innovation.

45. The current framework, and sub-framework of rules and tests, ranging from: Capital Gains Tax, Income Tax, Fringe Benefit Tax, Goods & Services Tax, Controlled Foreign Company rules, Transfer Pricing Rules, amongst others, serve to stifle innovation. Amendment to the SBT and COT rules will serve to do little to encourage innovation.

46. Furthermore, as already raised briefly in this paper, Australia should endeavour to exceed the expectations of the international community and be a leader in innovation, and therefore also lead in its regulatory framework. A piecemeal, ‘herd-mentality’ to tax reform will not achieve the desired outcomes that are being sought.

47. To the extent of Franksons’ knowledge and research, no other jurisdiction in the world has as streamlined, start-up or innovation focused tax schemes. Perhaps in the spirit of innovation and innovating, it is time we put metal to our words and lead from the front.

We would like to thank the Treasury for the opportunity to comment on the Exposure Draft and we welcome any opportunity to discuss our comments further.

Yours sincerely,

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Appendix A

Table 12.8: Treatment of losses – Hong Kong, Malaysia, Singapore and Taiwan

	Treatment of tax losses	Transfer (Including conditions)
Hong Kong	Unused tax losses carried forward without time limit to offset future profits regardless of whether these profits are from the business or whether the same business is still carried on. No carry back provisions.	No continuity of ownership requirement but specific loss trafficking provisions. No consolidation of tax losses across a group. However, group relief provisions are under consideration.
Malaysia	Carry forward indefinitely (business losses offset against business income, tax depreciation against income from same source only). No loss carry back.	Continuity of share ownership test is required for utilisation of business loss and unutilised capital allowances / tax depreciation. There is no general group relief.
Singapore	Trading losses may offset all other chargeable income of the same year. Any excess unutilised losses, if not carried back or transferred out under group relief, may be carried forward indefinitely for offset against future income from all sources. Similarly any excess capital allowances are allowed to offset against other chargeable income of the same year. Any unrelieved capital allowances, if not carried back or transferred out under group relief, may be carried forward indefinitely for offset against future income derived from the same trade. One year carry-back allowed with effect from Year of Assessment 2006 but limited to S\$100,000 of unutilised capital allowances and trade losses.	The loss carry-back and carry-forward provisions are subject to the taxpayer meeting the substantial (50 per cent or more) share ownership test at the ultimate holding company level. For carry-back and carry-forward of unutilised capital allowances, there is an additional provision that the taxpayer must continue to carry on the same business in respect of which the capital allowances arose (same business test). Group relief is available for a Singapore group. A Singapore group consists of a Singapore-incorporated parent company and all of its Singapore-incorporated subsidiaries. Two Singapore-incorporated companies are members of the same group if one is 75 per cent owned by the other, or both are 75 per cent owned by a third Singapore-incorporated company.
Taiwan	For companies which maintain a complete set of accounts and which use 'blue returns', losses may be carried forward for five years. No carry back of losses is allowed.	No

Source: Australian Treasury Website¹⁶

¹⁶ Australian Treasury website, http://comparativetaxation.treasury.gov.au/content/report/html/14_Chapter_12-05.asp, viewed 19 April 2016.

Appendix B

Country	Restrictions	Exceptions
Australia	Change of ownership and activity	Ownership tracing concessions apply to widely held companies
Austria	Change of ownership and activity	Other (non-tax) considerations
Canada	Change of ownership and activity	Acquisition of corporations business activities
Denmark	Change of ownership and other criteria	Internal reorganisations
France	Change of activity	No
Germany	Change of ownership	Other (non-tax) considerations
Ireland	Change of ownership and activity	Internal reorganisations
Italy	Change of ownership and activity, mergers	Other (non-tax) considerations
Mexico	Change of ownership and activity, mergers	Inheritance, donation, internal reorganisation, merger and split off that are not considered alienations for tax purposes
Netherlands	Change of ownership and activity	Lack of tax avoidance motive
New Zealand	Change of ownership	Ownership tracing concessions Internal reorganisations
Norway	Change of ownership and other criteria	Lack of tax avoidance motive
Spain	Change of ownership	Internal reorganisations
Sweden	Change of ownership	Internal reorganisations
Switzerland	Change of ownership and restart of activity	Financial restructurings
United Kingdom	Change of ownership and activity	Internal reorganisations
United States	Change of ownership	No

Source: Table adapted from OECD, Corporate Loss Utilisation through Aggressive Tax Planning (2011), p.34.

Appendix C

Table 12.7: Corporate tax rates — Hong Kong, Malaysia, Singapore and Taiwan

	Top combined corporate tax rate (per cent)	Comment						
Hong Kong	17.5	The 17.5 per cent rate covers all profits from carrying on a trade or business (excluding profits from the sale of capital assets) arising in or derived from Hong Kong. No distinction is made between residents and non-residents. There are a number of exemptions or concessional taxation treatments, including for bank deposit interest income and profits from the reinsurance of offshore risks by a professional re-insurer.						
Malaysia	28	Companies with paid-up capital of 2.5 million ringgit or less are taxed at 20 per cent on taxable income up to 500,000 ringgit with the normal rate applying to any excess. There are a range of exemptions from the company tax including the income of: resident companies engaged in operating Malaysian ships; income from the rental of international shipping containers received by non-residents from Malaysian shipping companies; and interest received by non-resident companies from deposits with a licensed bank and finance company. For companies carrying on petroleum production the rate is 38 per cent. While insurance companies are taxed at 8 per cent on their investment income the normal rate applies to their shareholders' fund income. Leasing income derived by a non-resident with no permanent establishment in Malaysia for use of movable property is taxed at 10 per cent.						
Singapore	20	A partial tax exemption scheme exists for companies, which exempts from tax 75 per cent of up to the first S\$10,000 of a company's income; and 50 per cent of up to the next S\$90,000 of the company's income. For new companies, a complete income tax exemption (except for Singapore franked dividends) is available for a qualifying company on income up to S\$100,000, for any of its first three consecutive assessment years that lie between 2005 and 2009. A concessional tax rate of 10 per cent or less is levied on a range of particular activities including: the financial sector incentive scheme; offshore leasing; offshore insurance and reinsurance; offshore global trading; and finance and treasury operations. Companies engaged in the shipping of outbound passengers, mail, livestock or goods from Singapore are exempt from income tax.						
Taiwan	25	The profit-seeking enterprise tax is levied on the income of all business forms including sole traders and partnerships. Rates for domestic enterprises (TW\$) <table border="1" style="margin-left: 20px;"> <tr> <td>Up to 50,000</td> <td>0</td> </tr> <tr> <td>50,000 to 100,000</td> <td>15</td> </tr> <tr> <td>Over 100,000</td> <td>25</td> </tr> </table> The 15 per cent rate applies to total taxable income but the tax may not be in excess of 50 per cent of the balance of taxable income greater than TW\$50,000. If taxable income is greater than TW\$100,000, 25 per cent is imposed on any excess. A withholding tax applies to income paid to domestic enterprises (apart from profit distributions) which is generally creditable against the enterprise's tax liability. A foreign enterprise which either has a fixed place of business or has a business agent in Taiwan is taxed as a domestic firm. Other foreign firms are subject only to a final withholding tax which is levied at 15, 20 or 25 per cent depending on the type of income. There are a number of exemptions including: income received by branches of international financial banks; inter-corporate dividends of domestic corporations; the new or expanded income of newly-incorporated or growing enterprises that invest in manufacturing and its accompanying technical services industry with the exemption applying for five years from the time such enterprises sell their new or expanded output; and the income of logistics distribution centres set up in Taiwan by foreign enterprises or their branches only for storage, simple processing and delivery to domestic clients.	Up to 50,000	0	50,000 to 100,000	15	Over 100,000	25
Up to 50,000	0							
50,000 to 100,000	15							
Over 100,000	25							

 Source: Australian Treasury Website¹⁷

¹⁷ Australian Treasury website, http://comparativetaxation.treasury.gov.au/content/report/html/14_Chapter_12-05.asp, viewed 19 April 2016.