Foreword

This publication is to assist in the completion of the *Losses schedule 2003*. This publication is NOT a guide to income tax law. More detailed information is available in other publications. Other publications you may need to refer to when completing the losses schedule are:

- *Capital gains tax (CGT) schedule 2003* (NAT 3423—6.2003)
- *Company tax return instructions 2003* (NAT 0669—6.2003)
- *Foreign income return form guide* (NAT 1840u—6.2003)
- *Fund income tax and regulatory return instructions 2003* (NAT 1601—6.2003)
- *Guide to capital gains tax* (NAT 4151—6.2003)
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Partnership and trust tax returns instructions 2003* (NAT 2297—6.2003)
- various Taxation Rulings

To find out how to obtain copies of these publications, see the inside back cover of these instructions.

This publication contains a number of abbreviations for names or technical terms. While each term abbreviated is spelt out the first time it is used we have also provided a list of abbreviations for you to refer to; this abbreviations list appears on page 31. We have also provided a list of Taxation Rulings referred to in this publication, with their full titles; this list appears on page 31.

Please get help from the Australian Taxation Office (ATO) or a professional tax practitioner if you feel this publication does not fully cover your circumstances.

As part of our commitment to producing accurate publications, a taxpayer will not be subject to penalties if it is demonstrated that a tax claim is based on wrong information contained in this publication.

Contents

Losses schedule 2003 instructions

Who is required to complete a losses schedule?

Do any of the following tests apply to your entity (that is company, trust or superannuation fund)?

If so, complete and submit a losses schedule with your 2002–03 tax return.

A losses schedule is required if the entity:	*Company*	*Trust*	*Fund*
• has a total of tax losses and net capital losses carried forward to the 2003–04 income year greater than $100,000	√	√	√
• is required by section 165-13 of the *Income Tax Assessment Act 1997* (ITAA 1997) to satisfy the same business test in Subdivision 165-E of that Act to claim a deduction for a loss in the 2002–03 income year or to apply a loss in a later income year or, having passed the continuity of ownership test, has claimed a deduction for tax losses and/or net capital losses greater than $100,000	√		
• is a listed widely held trust that is required by section 266-125 of Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936) to satisfy the same business test in Subdivision 269-F of that Schedule to deduct a loss in the 2002–03 or later income years or, having passed the 50% stake test, has claimed a deduction for tax losses greater than $100,000		√	
• has a changeover time that occurred after 1.00pm by legal time in the Australian Capital Territory on 11 November 1999 and determined that it has an unrealised net loss as defined in the provisions of Subdivision 165-CC of ITAA 1997	√		
• is a life insurance company and has either a virtual pooled superannuation trust (PST) loss or a virtual PST net capital loss carried forward to the 2003–04 income year	√	√	
• transfers out a tax loss or a net capital loss to another group company	√		
• receives a tax loss or a net capital loss which is transferred to the entity from another group company	√		
• claims a deduction for foreign source losses	√	√	√
• has ‘current year’ foreign source losses	√	√	√
• has foreign source losses carried forward to later income years	√	√	√
• claims a deduction for earlier year controlled foreign company (CFC) losses	√	√	√
• has current year CFC losses	√	√	√
• has CFC losses carried forward to later income years	√	√	√

Note: An entity may need to complete a losses schedule in respect of certain aspects of its net capital losses. While some of the information requested in the losses schedule is also requested in the *Capital gains tax (CGT) schedule 2003* (CGT schedule), an entity that completes a losses schedule may also need to complete a CGT schedule.

If the entity completes a losses schedule in respect of any aspect of its losses, all relevant parts of the schedule must be completed. For example, if the entity completes a schedule as a result of foreign source losses and has both tax losses and net capital losses carried forward to later income years, details of such losses are required even if the total of these losses is not greater than $100,000.

Note: An entity will not be required to lodge a losses schedule where it joins a consolidated group during the income year. There is no requirement to lodge a losses schedule covering the period from the start of the income year to the date of joining the consolidated group. For consolidated groups, refer to the *Consolidated groups losses schedule 2003* instructions and the *Consolidated groups losses schedule 2003*.

Completing the losses schedule

Tax file number (TFN)

Print the tax file number (TFN) of the entity.

Name of entity

Print the name of the entity.

The name shown must be the same as that shown on the entity's tax return.

Australian business number

Print the Australian business number (ABN), if any, of the entity.

Signature as prescribed in tax return

The person who is required to sign, and who signs, the tax return of the entity is also required to sign the losses schedule.

Meaning of 'applied' and 'unapplied' in this schedule

An 'unapplied' tax loss includes a tax loss for which a deduction has not yet been claimed, that has not been reduced by net exempt income or, in the case of companies, has not been transferred to other companies that are members of the same wholly owned group.

Conversely, an 'applied' tax loss includes a tax loss for which a deduction has been claimed, that has been reduced by net exempt income or, in the case of companies, has been transferred to other companies that are members of the same wholly owned group.

An 'unapplied' net capital loss includes a net capital loss which has not been applied against capital gains or, in the case of companies, has not been transferred to other companies that are members of the same wholly owned group.

Conversely, an 'applied' net capital loss includes a net capital loss which has been applied against capital gains or, in the case of companies, has been transferred to other companies that are members of the same wholly owned group.

Part A Losses carried forward to the 2003–2004 income year—excludes foreign source losses and film losses

There are certain tests that must be satisfied for the entity to be able to apply a loss or to carry forward a loss to a later income year. The entity must keep a record of its tax losses and account for any adjustments including those made by the Australian Taxation Office (ATO). These records must be retained for five years after the end of the year in which the losses of the entity were fully applied.

If required the entity must be able to demonstrate not only the balance of any losses being either claimed or carried forward but also how those losses arose.

If the entity is required to complete a losses schedule for any reason, for example because it is claiming a deduction for foreign source losses and the total of its tax losses and net capital losses is less than $100,000, details of those tax losses and net capital losses must be provided in Part A of the losses schedule.

1 Tax losses carried forward to later income years

Complete labels **B** to **G** and **U** where appropriate; otherwise leave blank.

Note:
- **Do not include net capital losses, foreign source losses or film losses at item 1.**
- **Net capital losses carried forward to later income years are shown at item 2, and foreign source losses at Part F—Foreign source losses. Details of film losses carried forward are not required to be reported on this schedule.**
- **For the definition of a tax loss refer to section 995-1 of ITAA 1997.**

Subject to various rules, an earlier year tax loss is deducted in a later income year in the order in which it was incurred—to the extent that it has not already been applied—as shown by the following formulae:
- If the entity has no net exempt income and has an excess of assessable income over total deductions—other than tax losses—deduct the tax loss from the excess assessable income. Refer to subsection 36-15(2) of ITAA 1997.
- If the entity has net exempt income and an excess of assessable income over total deductions—other than tax losses—first deduct the tax loss from the net exempt income, with any remaining amount of tax loss then being deducted from the excess assessable income. Refer to subsection 36-15(3) of ITAA 1997.

- If the entity has net exempt income and an excess of total deductions—other than tax losses—over assessable income, deduct the excess deductions from the net exempt income and then deduct the tax loss from any net exempt income that remains. Refer to subsection 36-15(4) of ITAA 1997.

An entity's net exempt income is calculated in accordance with section 36-20 of ITAA 1997.

This amount is not necessarily the same as the amount shown at item 7, label **V**—**Exempt income** in the *Company tax return 2003*.

For more information refer to the information on:

- item 7, label **R**—**Tax losses deducted** in the *Company tax return 2003 instructions*
- item 9, label **F**—**Tax losses deducted** in the *Fund income tax and regulatory return 2003 instructions*
- item 22, label **C**—**Tax losses deducted** in the *Partnership and trust tax returns 2003 instructions*.

Note:

- An earlier year tax loss may be reduced by the commercial debt forgiveness provisions of Schedule 2C of ITAA 1936.
- Non-primary production tax losses for the 1988–89 and earlier income years may be carried forward for a period of seven years from the year in which they were incurred. At the end of that period, non-primary production losses incurred prior to the 1989–90 income year are not deductible. Refer to subsection 80(2) of ITAA 1936.
- Losses incurred in relation to deriving foreign income are excluded from labels **B** to **G** and **U**. For rules which quarantine classes of deductions and losses of earlier years incurred in producing foreign source income refer to sections 79D and 160AFD of ITAA 1936. It is important to note that the definition of foreign income deductions contained in section 160AFD excludes debt deductions, other than those attributable to an overseas permanent establishment—for example, interest and certain other expenses from the calculation of a foreign source loss. Debt deductions incurred in income years beginning on or after 1 July 2001 are therefore not subject to the foreign loss quarantining provisions. Allowable foreign losses are taken into account in the calculation of assessable foreign income for taxation purposes—see **Part F—Foreign source losses** on page 29.
- Pooled development fund (PDF) tax losses are excluded from labels **B** to **G** and **U**. For more information on deductibility of PDF tax losses refer to Division 195 of ITAA 1997.
- Capital losses may only be applied in accordance with Division 102 of ITAA 1997. A CGT schedule may need to be completed. For more information refer to the publication *Guide to capital gains tax*.

For more information refer to the information on item 7, label **R**—**Tax losses deducted** in the *Company tax return instructions 2003*.

Year of loss 2002–2003

Show at label **B** the unapplied amount of tax losses incurred by the entity in the 2002–03 income year and carried forward to later income years under section 36-15 of ITAA 1997.

If there are no 2002–03 tax losses carried forward to the 2003–04 income year, leave blank.

Year of loss 2001–2002

Show at label **C** the unapplied amount of tax losses incurred by the entity in the 2001–02 income year and carried forward to later income years under section 36-15.

Do not show tax losses incurred in the 2001–02 income year that have already been applied.

If no tax losses were incurred in the 2001–02 income year, or if tax losses incurred in that year have been applied in full, leave blank.

Year of loss 2000–2001

Show at label **D** the unapplied amount of tax losses incurred by the entity in the 2000–01 income year and carried forward to later income years under section 36-15.

Do not show tax losses incurred in the 2000–01 income year that have already been applied.

If no tax losses were incurred in the 2000–01 income year, or if tax losses incurred in that year have been applied in full, leave blank.

Year of loss 1999–2000

Show at label **E** the unapplied amount of tax losses incurred by the entity in the 1999–2000 income year and carried forward to later income years under section 36-15.

Do not show tax losses incurred in the 1999–2000 income year that have already been applied.

If no tax losses were incurred in the 1999–2000 income year, or if tax losses incurred in that year have been applied in full, leave blank.

Year of loss 1998–1999

Show at label **F** the unapplied amount of tax losses incurred by the entity in the 1998–99 income year and carried forward to later income years under section 36-15.

Do not show tax losses incurred in the 1998–99 income year that have already been applied.

If no tax losses were incurred in the 1998–99 income year, or if tax losses incurred in that year have been applied in full, leave blank.

Year of loss 1997–1998 and earlier income years

Show at label **G** the total amount of unapplied tax losses incurred by the entity in the 1997–98 and all earlier income years where those losses are available to be carried forward to later income years.

Do not show tax losses incurred in the 1997–98 and earlier income years that have already been applied.

If no tax losses were incurred in the 1997–98 and all earlier income years, or if tax losses incurred in those years have been applied in full, leave blank.

> **Note**: If a tax loss was not a primary production loss and was incurred in the 1988–89 or an earlier income year, that loss can only be carried forward for a period of seven years. Refer to section 80 of ITAA 1936.

Total

Show at label **U** the total of tax losses carried forward to the 2003–04 income year. This amount is the total of the amounts shown at labels **B** to **G**.

> Transfer the amount at label **U** to the corresponding label on your tax return.

> **Note about the examples for Part A items 1 and 2:**
> - The examples are only intended to be a guide and represent one of the many possible methods of calculating the amount of losses available to be applied or carried forward to later income years.
> - The examples apply equally to companies, trusts and funds with the exception that trusts and funds are not able to transfer losses to other entities, nor are they able to have losses transferred to them.
> - In all examples, it is assumed that the entity passes all tests, at all times, for that entity to be eligible to apply these losses.

2002–03

Example 1

A company's trading results for the 1995–96 to 2002–03 income years and movement in the balances of its tax losses are as follows:

Year	Tax loss incurred $	Net exempt income $	Tax loss deducted $	Tax loss transferred $	Balance of tax losses $
1995–96	10,000				10,000
1996–97	30,000				40,000
1997–98	20,000				60,000
1998–99		1,000	2,000	4,000	53,000
1999–2000		500		3,000	49,500
2000–01	6,000			8,000	47,500
2001–02	1,000	600		1,000	46,900
2002–03			5,000	2,000	39,900

The company's loss calculation sheet shows the following progressive balances of tax losses for the income years following the 1995–96 income year as follows:

Balance of losses	1996 $	1997 $	1998 $	1999 $	2000 $	2001 $	2002 $	2003 $
1997–98 and earlier income years	10,000	40,000	60,000	53,000	49,500	41,500	40,500	33,500
1998–99								
1999–2000								
2000–01						6,000	6,000	6,000
2001–02							400	400
2002–03								
TOTAL	**10,000**	**40,000**	**60,000**	**53,000**	**49,500**	**47,500**	**46,900**	**39,900**

Complete Part A, item 1 as follows:

Year of loss	Label	Amount
2002–2003	B	.00
2001–2002	C	400 .00
2000–2001	D	6000 .00
1999–2000	E	.00
1998–1999	F	.00
1997–1998 and earlier income years	G	33500 .00
Total	U	39900 .00

Transfer the amount at label **U**, *$39,900*, to the corresponding label on your tax return.

Example 2

A company's trading results for the 1996–97 to 2002–03 income years and movement in the balances of its tax losses are as follows:

Year	Tax loss incurred $	Net exempt income $	Tax loss deducted $	Tax loss transferred $	Balance of tax losses $
1996–97	6,000	200			5,800
1997–98		1,000	1,000	2,000	1,800
1998–99	5,000			2,000	4,800
1999–2000	1,000	500			5,300
2000–01			600	1,000	3,700
2001–02		100		800	2,800
2002–03	2,000			500	4,300

The company's loss calculation sheet shows the following progressive balances of tax losses for the income years following the 1996–97 income year as follows:

Balance of losses	1997 $	1998 $	1999 $	2000 $	2001 $	2002 $	2003 $
1997–98 and earlier income years	5,800	1,800					
1998–99			4,800	4,800	3,200	2,300	1,800
1999–2000				500	500	500	500
2000–01							
2001–02							
2002–03							2,000
TOTAL	**5,800**	**1,800**	**4,800**	**5,300**	**3,700**	**2,800**	**4,300**

Complete Part A, item 1 as follows:

Year of loss	Label	Amount
2002–2003	B	2000 .00
2001–2002	C	.00
2000–2001	D	.00
1999–2000	E	500 .00
1998–1999	F	1800 .00
1997–1998 and earlier income years	G	.00
Total	U	4300 .00

Transfer the amount at label **U**, *$4300*, to the corresponding label on your tax return.

2 Net capital losses carried forward to later income years

Note:
- Complete labels **H** to **M** and **V** where appropriate; otherwise leave blank.
- All entities that are required to complete a losses schedule are also required to complete the details requested in this item if the entity has net capital losses carried forward to later income years.
- The net capital losses of a company shown at labels **H** to **M** include any unapplied current year net capital losses calculated in accordance with Subdivision 165-CB of ITAA 1997—see **Part B—Ownership and same business test,** item 4—Do 'current year loss' provisions apply? on page 14—and any unapplied earlier year net capital losses worked out in accordance with Subdivision 165-CA of ITAA 1997, that applies to income years ending after 21 September 1999, except in so far as they relate to changes in the ownership or control of an entity that has an unrealised net loss.
- The entity may be required to complete a CGT schedule. For more information refer to the publication *Guide to capital gains tax*.

Year of loss 2002–2003

Show at label **H** the amount of any unapplied net capital losses made by the entity in the 2002–03 income year that can be carried forward and applied to reduce capital gains in later income years.

If there are no net capital losses from the 2002–03 income year that are available to be carried forward to later income years, leave blank.

Year of loss 2001–2002

Show at label **I** the amount of any unapplied net capital losses made by the entity in the 2001–02 income year that can be carried forward and applied to reduce capital gains in later income years.

Do not show net capital losses made in the 2001–02 income year that have already been applied.

If no net capital losses were made in the 2001–02 income year, or if net capital losses made in that year have been applied in full, leave blank.

Year of loss 2000–2001

Show at label **J** the amount of any unapplied net capital losses made by the entity in the 2000–01 income year that can be carried forward and applied to reduce capital gains in later income years.

Do not show net capital losses made in the 2000–01 income year that have already been applied.

If no net capital losses were made in the 2000–01 income year, or if net capital losses made in that year have been applied in full, leave blank.

Year of loss 1999–2000

Show at label **K** the amount of any unapplied net capital losses made by the entity in the 1999–2000 income year that can be carried forward and applied to reduce capital gains in later income years.

Do not show net capital losses made in the 1999–2000 income year that have already been applied.

If no net capital losses were made in the 1999–2000 income year, or if net capital losses made in that year have been applied in full, leave blank.

Year of loss 1998–1999

Show at label **L** the amount of any unapplied net capital losses made by the entity in the 1998–99 income year that can be carried forward and applied to reduce capital gains in later income years.

Do not show net capital losses made in the 1998–99 income year that have already been applied.

If no net capital losses were made in the 1998–99 income year, or if net capital losses made in that year have been applied in full, leave blank.

Year of loss 1997–1998 and earlier income years

Show at label **M** the amount of any unapplied net capital losses made by the entity in the 1997–98 and earlier income years that can be carried forward and applied to reduce capital gains in later income years.

Do not show net capital losses made in the 1997–98 and earlier income years that have already been applied.

If no net capital losses were made in the 1997–98 or earlier income years, or if net capital losses made in any of those years have been applied in full, leave blank.

Total

Show at label **V** the total of unapplied net capital losses carried forward to the 2003–04 income year at labels **H** to **M**.

Transfer the amount at label **V** to the corresponding label on your tax return.

Example 3

A company's results for the 1997–98 to 2002–03 income years and movement in the balances of its net capital losses are as follows:

Year	Net capital loss incurred $	Net capital loss applied $	Net capital loss transferred $	Balance of net capital losses $
1997–98	5,000			5,000
1998–99	9,000		4,000	10,000
1999–2000		2,000	1,000	7,000
2000–01	8,000		1,000	14,000
2001–02		1,500		12,500
2002–03	1,000		2,000	11,500

The company's loss calculation sheet shows the following progressive balances of net capital losses for the income years following the 1997–98 income year as follows:

Year	1998 $	1999 $	2000 $	2001 $	2002 $	2003 $
1997–98	5,000	1,000				
1998–99		9,000	7,000	6,000	4,500	2,500
1999–2000						
2000–01				8,000	8,000	8,000
2002–03						1,000
TOTALS	**5,000**	**10,000**	**7,000**	**14,000**	**12,500**	**11,500**

Complete Part A, item 2 as follows:

Year of loss	Label	Amount
2002–2003	H	1,000 .00
2001–2002	I	.00
2000–2001	J	8,000 .00
1999–2000	K	.00
1998–1999	L	2,500 .00
1997–1998 and earlier income years	M	.00
Total	V	11,500 .00

Transfer the amount at label **V**, *$11,500*, to the corresponding label on your tax return.

Part B Ownership and same business test—company and listed widely held trust only

1 Whether continuity of majority ownership test passed

Note: If the entity has deducted, transferred in or transferred out (as applicable) in the 2002–03 income year a loss incurred in any of the listed years, print Y for yes or N for no to indicate whether the entity has satisfied the continuity of majority ownership test in respect of that loss.

The aim of item 1 is to find out if:
- the continuity of majority ownership test at section 165-12 of ITAA 1997—if the entity is a company, or
- the 50% stake test at Subdivision 269-C of Schedule 2F to ITAA 1936—if the entity is a listed widely held trust

has been satisfied in respect of a loss if a loss in any of the periods listed at item 1 is applied by either:
- being claimed as a deduction—if the entity is a company or listed widely held trust
- being transferred out by a company to another group company, or
- being transferred in by a company from another group company.

Note: If a loss has been transferred between group companies, both the company making the transfer (called the 'transferor' or 'loss' company) and the company receiving the transfer (called the 'transferee', 'gain' or 'income' company) are required to complete a losses schedule and supply the information requested in this part as well as the information requested in Part E of the losses schedule.

Company only

A tax loss of an earlier income year is not deductible unless a company has maintained the same owners as prescribed at section 165-12 of ITAA 1997.

For more information on the rules for arrangements affecting beneficial ownership refer to section 165-180 of ITAA 1997.

For more information refer to the information on item 7, label **R**—**Tax losses deducted** in the *Company tax return 2003 instructions*.

The following conditions apply:
- Where tax losses are claimed in an income year ending after 21 September 1999, majority ownership must be maintained from the start of the loss year to the end of the income year—ownership test period.
- There must be persons who beneficially owned (between them) shares carrying (between them) the right to:
  - exercise more than 50% of the voting power in the company
  - rights to receive more than 50% of the company's dividends, and
  - rights to receive more than 50% of the company's capital distributions

  at all times during the ownership test period. Refer to sections 165-150 to 165-160 of ITAA 1997.
- It is reasonable to assume that there are persons (none of them companies) who between them have beneficial interests (directly, or indirectly through one or more interposed entities) in shares in the company carrying (between them) a majority of the voting power, and rights to dividend and capital distributions at all times during the ownership test period. Refer to sections 165-150 to 165-160 of ITAA 1997.
- Where tax losses are claimed in an income year ending after 21 September 1999, the company must meet the 'same share and interest' requirement, except where the 'saving' rule applies. Refer to section 165-165 of ITAA 1997.
- A modified version of the above rules applies to shares held by a listed public company in a wholly owned subsidiary, and to interests in any entity interposed between a listed public company and its wholly-owned subsidiary. Refer to Division 166 of ITAA 1997.

If the company fails to meet a condition of section 165-12 of ITAA 1997, the company must satisfy the conditions relating to carrying on the same business under section 165-13 of ITAA 1997.

For more information see the same business test at item 2 below and refer to Taxation Ruling TR 1999/9.

Note:
- **If the company satisfies the ownership tests of section 165-12 of ITAA 1997 or the same business test of section 165-13 of ITAA 1997, it cannot deduct earlier income year tax losses unless it satisfies the control test at section 165-15 of ITAA 1997.**
- **Anti-avoidance provisions are found at Subdivisions 175-A and 175-B of ITAA 1997. For more information refer to Taxation Ruling TR 1999/9.**

For more information refer to the information on item 7, label **R**—**Tax losses deducted** in the *Company tax return 2003 instructions*.

Listed widely held trust only

A tax loss for a listed widely held trust may not be deductible if abnormal trading in the units of the trust has occurred during the period from the beginning of the loss year until the end of the income year. Abnormal trading is defined in Subdivision 269-B of Schedule 2F to ITAA 1936. If abnormal trading has occurred the trust must meet the 50% stake test in Subdivision 269-C of Schedule 2F to ITAA 1936. If the trust cannot meet the 50% stake test it must satisfy the same business test in Subdivision 269-F of Schedule 2F to ITAA 1936.

Note: If deductions for bad debts are involved, then section 266-135 of ITAA 1936 may apply.

Completing item 1 of Part B

Print **Y** for yes at labels **A** to **F** (as applicable) if, during the 2002–03 income year, the entity seeks to utilise a loss of the relevant year and the entity has passed:

- the continuity of majority ownership test—if the entity is a company, or
- the 50% stake test—if the entity is a listed widely held trust

in respect of the loss of that particular year.

Print **N** for no at labels **A** to **F** (as applicable) for each year in respect of which the entity seeks to deduct a loss if the continuity of majority ownership test or the 50% stake test—as applicable—has not been satisfied in respect of that loss and the entity is required to satisfy the 'same business test'.

If there was no loss deducted, transferred in or transferred out in respect of a particular year, leave the box next to that year blank.

Note: Although examples 4–9 are for companies, the examples, notes and comments apply equally to listed widely held trusts—which must satisfy the 50% stake test—with the exception that losses cannot be transferred either from or to a trust.

Example 4

A company had incurred losses in earlier income years. The company applied all of these losses by either claiming them as a deduction against its own income or transferring them to another group company in the 2002–03 income year.

At the beginning of the 2002–03 income year, the company had undeducted losses from the 1996–97, 1999–2000, 2000–01 and 2001–02 income years. The continuity of majority ownership test was failed during the 2000–01 income year, but all other tests for allowing the losses to be applied have been passed by the company. On these facts, for part of the losses of the 2000–01 income year and for the losses of all earlier income years, the company has not passed the continuity of majority ownership test.

Complete Part B, item 1 as follows:

Year of loss	Label	Print Y for yes or N for no in the appropriate box.	
2002–2003	A	Y	N
2001–2002	B	Y	N
2000–2001	C	Y	N
1999–2000	D	Y	N
1998–1999	E	Y	N
1997–1998 and earlier income years	F	Y	N

The above example shows that:

- there was no loss deducted, transferred in or transferred out for the 1998–99 or the 2002–03 income years
- the company passed the continuity of majority ownership test for the loss of the 2001–02 income year
- the company failed the continuity of majority ownership test for the losses of the 1997–98 and earlier income years and the 1999–2000 income years and
- the company failed the continuity of majority ownership test for part of the loss of the 2000–01 income year.

Example 5

A transferee company (income or gain company) received a number of loss transfers—these can be either tax losses or net capital losses—from another group company—the transferor (loss company)—during the 2002–03 income year. The transferor and the transferee companies satisfied all tests for being able to apply a loss in relation to the amounts transferred with the exception of the continuity of majority ownership test for some of the losses transferred.

The losses transferred to the transferee company were incurred by the transferor company in the 1998–99, 1999–2000 and 2001–02 income years. The continuity of majority ownership test was failed in the 2000–01 income year. As the companies failed the continuity of majority ownership test for the losses of the 1998–99 and 1999–2000 income years but passed the test in respect of the loss of the 2001–02 income year, the losses schedule for the transferee company shows **Y** for yes at label **B** and **N** for no at labels **D** and **E**.

The transferee company completes Part B, item 1 as follows:

Year of loss		Print Y for yes or N for no in the appropriate box.	
2002–2003	A	Y	N
2001–2002	B	Y	N
2000–2001	C	Y	N
1999–2000	D	Y	N
1998–1999	E	Y	N
1997–1998 and earlier income years	F	Y	N

Example 6

An entity—company or listed widely held trust—that has satisfied the continuity of majority ownership test or the 50% stake test (as applicable) applies, in the 2002–03 income year, a net capital loss incurred in the 1998–99 income year.

Print **Y** for yes in the box at label **E** **1998–1999**.

Example 7

Both the transferor company and the transferee company satisfy the continuity of majority ownership test. In accordance with the provisions of Division 170 of ITAA 1997, a loss incurred by the transferor company in the 2000–01 income year is transferred to the transferee company in the 2002–03 income year.

The transferee company prints **Y** for yes at label **C**—**2000–2001** (as does the transferor company in its own losses schedule).

Example 8

A company that incurred a loss in the 1997–98 income year subsequently undergoes a change in majority ownership in the 1998–99 income year. The company satisfies the same business test in respect of the 1997–98 loss.

The company incurs a further loss in the 1999–2000 income year. The company satisfies the continuity of majority ownership test in respect of this 1999–2000 loss.

In the 2002–03 income year the company deducts the losses incurred in the 1997–98 and 1999–2000 income years.

Print **Y** for yes at label **D**—**1999–2000** and **N** for no at label **F**—**1997–1998 and earlier income years**.

Example 9

A company incurs a current year loss in the 2002–03 income year. The company undergoes a change in majority ownership in the 2002–03 income year but passes the same business test.

The company transfers out a 1998–99 loss in the 2002–03 income year. Another loss incurred by the company in the 1999–2000 income year remains undeducted.

Leave both label **A**—**2002–2003** and label **D**—**1999–2000** blank as no deduction is being claimed in the 2002–03 year in respect of these losses.

Print **N** for no at label **E**—**1998–1999** because the company failed the continuity of majority ownership test for the loss incurred in that year.

2 Amount of losses deducted, transferred in or transferred out, for which the continuity of majority ownership test is not passed but the same business test is satisfied—excludes foreign source losses and film losses

Show at item 2 the total amount of losses applied during the 2002–03 income year:

- claimed as a deduction—if the entity is either a company or a listed widely held trust
- either transferred in or transferred out—if the entity is a company

and for which the same business test must be satisfied.

> **Note**:
> - Both the transferor company and the transferee company must satisfy the same business test. Refer to Subdivisions 165-E, 170-A and 170-B of ITAA 1997.
> - A fund or a trust, including a listed widely held trust, cannot transfer losses. In addition to those companies with either tax losses or net capital losses that have not passed the continuity of majority ownership test, this item also applies to listed widely held trusts with tax losses that have had abnormal trading in their units as well as having failed the 50% stake test.

Company only

Under the same business test the company must carry on the same business throughout the income year that it carried on immediately before the disqualifying change of ownership—that is, before the end of the continuity period. The test is not satisfied if at any time during the income year the relevant entity did not carry on the same business as it did immediately before the change in the ownership of the entity or it derives assessable income from:

- a business of a kind that it did not carry on before the disqualifying event, or
- a transaction of a kind that it did not enter into in the course of its business operations before the disqualifying event.

'Same' means 'identical' and not merely 'similar'. The term 'same business' is to be read as referring to the same business, in the sense of the identical business.

However, the term does not mean identical in all respects.

A company may expand or contract its activities without necessarily ceasing to carry on the same business. The organic growth of a business does not necessarily cause the business to fail the same business test provided the business retains its identity. But if through a process of evolution a business changes its essential character, the entity would fail the test. Application of the same business test is a question of fact and is usually determined by a process of weighing up various relevant factors.

For more information refer to sections 165-13 and 165-210 of ITAA 1997 and Taxation Ruling TR 1999/9.

Listed widely held trust only

A listed widely held trust must carry on the same business as it carried on before the first abnormal trading in its units—that caused the failure of the 50% stake test—occurred.

For application of the same business test for a listed widely held trust see **Company only** on this page.

For more information refer to section 266-125 and Subdivision 269-F of Schedule 2F to ITAA 1936.

The principles outlined in Taxation Ruling TR 1999/9 may be of assistance.

Tax losses

Show at label **G** the amount of tax losses deducted by the entity, including, if the entity is a company, the amount of tax losses transferred in and claimed as a deduction by that company, that do not meet the continuity of majority ownership test but satisfy the same business test. The amounts of any losses transferred out by a transferor company that do not meet the continuity of majority ownership test but satisfy the same business test are shown on the losses schedule of the transferor company and the transferee company respectively.

Net capital losses

Show at label **H** the amount of net capital losses applied by a company, including the amount of any net capital losses transferred in and claimed as a deduction by that company, that do not meet the continuity of majority ownership test but satisfy the same business test.

The amounts of any net capital losses transferred out by a transferor company that do not meet the continuity of majority ownership test but satisfy the same business test are also to be shown at label **H** on the losses schedule of the transferor company.

Example 10

A company had the following losses:

Year	Tax loss $	Net capital loss $
1996–97	1,000	
1997–98	2,000	
1998–99		500
1999–2000	1,600	800
2000–01		
2001–02	10,000	2,000
2002–03		
Totals	**14,600**	**3,300**

There was a change in the underlying beneficial ownership of the company in the 2000–01 income year.

The company passed the same business test and all other tests in relation to the losses incurred prior to that year and passed the continuity of majority ownership test and all other tests in relation to the 2001–02 losses.

Tax losses

All tax losses incurred in the 1996–97, 1997–98 and 1999–2000 income years were deducted in the 2002–03 income year, as well as $6,000 of the 2001–02 tax loss.

Net capital losses

All of the 1998–99 net capital loss and $600 of the 1999–2000 net capital loss were applied in the 2002–03 income year.

Of all of the above losses, which are being applied in the 2002–03 income year, those which are subject to the same business test being satisfied by the company are as follows:

Tax losses	
Year	**Amount $**
1996–97	1,000
1997–98	2,000
1999–2000	1,600
Total	**4,600**

Net capital losses	
Year	**Amount $**
1998–99	500
1999–2000	600
Total	**1,100**

Complete Part B, item 2 as follows:

Tax losses	G	4,600 .00
Net capital losses	H	1,100 .00

The 2001–02 tax loss of $6,000 was deducted by the company on the basis that the company had satisfied the continuity of majority ownership test. Therefore, this amount is not shown at label **G—Tax losses.**

Similarly, as $200 of the 1999–2000 net capital loss was not sought to be applied during the 2002–03 income year, that amount of $200 is not shown at label **H—Net capital losses** for the 2002–03 income year even though the same business test would need to be passed in a later income year in order for the company to be able to apply that net capital loss in a later income year.

3 Losses carried forward for which the same business test must be satisfied before they can be deducted in later years—excludes foreign source losses and film losses

Note: Item 3 asks for information about the tax losses and net capital losses for which the entity must satisfy the same business test in subsequent years for the entity to be able to utilise those losses.

Company and listed widely held trust

For more information on the same business test see the information on Part B, item 2 on page 12.

Tax losses

Show at label **I** the total amount of tax losses carried forward to later income years for which the same business test must be satisfied for the entity to deduct those tax losses in later income years.

Net capital losses

Show at label **J** the total amount of net capital losses carried forward to later income years for which the same business test must be satisfied for the company to apply those net capital losses in later income years.

Example 11

As at the end of the 2002–03 income year, the company had the following losses available:

Year	Tax loss $	Net capital loss $
1996–97	1,500	
1997–98	3,000	
1998–99		700
1999–2000	1,900	900
2000–01		
2001–02	1,000	1,500
2002–03		
Totals	**7,400**	**3,100**

A change in the underlying beneficial interests in the company took place during the 2000–01 income year. As a result, the company must satisfy the same business test for the tax losses of the following income years:

- 1996–97 ($1,500)
- 1997–98 ($3,000)
- 1999–2000 ($1,900).

It must also satisfy the same business test in respect of the net capital losses for the following income years:

- 1998–99 ($700)
- 1999–2000 ($900).

The 2001–02 tax loss ($1,000) and the net capital loss ($1,500) are not affected.

The company completes Part B, item 3 as follows:

Tax losses **I** 6400.00

Net capital losses **J** 1600.00

4 Do 'current year loss' provisions apply?

Is the company required to calculate its taxable income or tax loss for the year under Subdivision 165-B or its net capital gain or net capital loss for the year under Subdivision 165-CB of ITAA 1997?

The current year loss rules in Subdivision 165-B of ITAA 1997 apply to tax losses where the company does not satisfy either the continuity of majority ownership test or the same business test for the whole income year. Alternatively the current year loss provisions apply where a person begins to control, or becomes able to control, the voting power in the company for the purpose or one of the purposes of gaining an advantage under ITAA 1997 or gaining such a benefit for someone else. Refer to section 165-40 of ITAA 1997.

The current year loss rules do not apply in those circumstances if the same business test is satisfied. The company calculates its taxable income and tax loss by dividing the income year into periods according to when the change in ownership or control took place. Each separate period is regarded as an income year, with a notional tax loss or notional taxable income calculated for each separate period.

The company's tax loss for the income year—refer to section 165-70 of ITAA 1997—consists of the total of tax losses calculated under section 165-50 or 165-75 of ITAA 1997.

An amended test also applies to companies with unrealised net losses where the continuity of ownership test is failed after 1.00pm by legal time in the Australian Capital Territory on 11 November 1999.

The current year loss rules in Subdivision 165-CB of ITAA 1997 apply in relation to net capital gains where the company is required to calculate its taxable income and tax loss for the income year under Subdivision 165-B of ITAA 1997—refer to section 165-102 of ITAA 1997. The company works out its net capital gain and net capital loss by dividing the income year into periods according to when the change in ownership or control took place.

A notional net capital gain or notional net capital loss is calculated for each period.

A company's net capital loss for the income year—refer to section 165-114 of ITAA 1997—consists of the total of notional net capital losses calculated under section 165-108 of ITAA 1997.

Print **Y** for yes at label **K** if the company is required to calculate its taxable income or tax loss under the provisions of Subdivision 165-B or its net capital gain or net capital loss under the provisions of Subdivision 165-CB.

Print **N** for no at label **K** if the company is not required to calculate its taxable income or tax loss under the provisions of Subdivision 165-B or its net capital gain or net capital loss under the provisions of Subdivision 165-CB.

Part C Unrealised losses—company only

Has a changeover time occurred in relation to the company after 1.00pm by legal time in the Australian Capital Territory on 11 November 1999?

A changeover time is a change in majority ownership or in the control of a company.

To determine whether a company has failed the continuity of majority ownership test or the change of control test for the purposes of Subdivision 165-CC of ITAA 1997, refer to:

- section 165-115C—change in ownership of company
- section 165-115D—change in control of company.

In determining whether there has been a change of ownership or control at a particular test time, the ownership or control profile is determined at two points in time, the reference time and the test time.

For this purpose, the reference (base) time is the later from 1.00pm by legal time in the Australian Capital Territory on 11 November 1999 (the commencement time) for a company in existence at that time or the time when it came into existence if not, then the time immediately after the last preceding changeover time, if any.

The continuity of majority ownership test is subject to a 'same share and interest' rule in section 165-165 of ITAA 1997. This requires—subject to special rules for share and unit 'splits' or 'consolidations'—that exactly the same shares must continue to be held by the same persons throughout the 'test period'—that is, from reference time to test time—to count towards satisfaction of the test. Other interests in the company—for example, shares in another company—must be exactly the same interests and beneficially owned by the same persons.

There is a 'saving rule' in section 165-115C of ITAA 1936 which provides that if the continuity of majority ownership test would have been satisfied but for the operation of the 'same share and interest rule', the test time is not a changeover time if the company has information from which it is reasonable to conclude that less than 50% of the company's unrealised net loss has been or will be duplicated as a result of any CGT event that happened during the test period. Subdivision 166-CA of ITAA 1997 modifies the way in which Subdivision 165-CC of ITAA 1997 applies to a listed public company.

If the answer is yes, print **Y** at label **L**, and complete label **M**.

If the answer is no, print **N** at label **L**, and do not complete labels **M**, **N** or **O**.

At the changeover time did the company satisfy the maximum net asset value test under section 152-15 of ITAA 1997?

Any company that has a net value of CGT assets of $5 million or less, as determined under section 152-15 of ITAA 1997, at the time it failed the continuity of majority ownership test, is not subject to the operation of Subdivision 165-CC of ITAA 1997. The maximum threshold amount of $5 million includes the net value of the CGT assets of the company and any entity connected or affiliated with the company as referred to in section 152-15 of ITAA 1997.

If the answer is yes, print **Y** at label **M**, and do not complete labels **N** and **O**.

If the answer is no, print **N** at label **M**, and complete label **N**.

> **Note**: If a company has failed the continuity of majority ownership test on two or more occasions since the commencement time, complete label **M** in respect of the latest changeover time.

If you printed N at label M, has the company determined it had an unrealised net loss at the changeover time?

Where a company that answered **Y** for yes at label **L** and **N** for no at label **M** has an unrealised net loss at the changeover time, the company cannot, to the extent of the unrealised net loss, have capital losses taken into account, or deduct revenue losses, in respect of CGT events that happen to CGT assets owned at the changeover time unless the company satisfies the same business test. The question whether a company has an unrealised net loss at the time of the change, is determined in accordance with the method statement in section 165-115E of ITAA 1997.

If the answer is yes, print **Y** at label **N**, and complete label **O**.

If the answer is no, print **N** at label **N**, and do not complete label **O**.

> **Note**: If a company has failed the continuity of majority ownership test on two or more occasions since the commencement time, complete label **N** in respect of the latest changeover time. Subdivision 165-CC of ITAA 1997 requires a company to determine whether it has an unrealised net loss each time that it experiences a changeover time.

If you printed Y at label N, what was the amount of unrealised net loss calculated under section 165-115E of ITAA 1997?

> **Note**: Subdivision 165-CC of ITAA 1997 does not specify when a company has to calculate whether it has an unrealised net loss. However this calculation must be done before claiming any loss or deduction on an asset that was held at the changeover time. Where no calculation has been undertaken as at the date of lodging the company's income tax return, print **N** for no at label **N**, and do not complete label **O**.

An unrealised net loss is, broadly, the excess of the company's unrealised losses on assets over unrealised gains on assets at the changeover time. This is determined by deeming such assets to be disposed of at market value at the changeover time. A company may choose to exclude every asset that it acquired for less than $10,000 from the calculation of the amount.

A company may also choose to use the written down value of depreciable plant—not a building or structure—at the changeover time rather than its market value at that time provided the expenditure incurred by the company to acquire the plant was less than $1 million and it would be reasonable for the company to conclude that the market value of the plant at the changeover time was not less than 80% of its written down value at that time.

The question whether a company has an unrealised net loss at a changeover time is calculated using the steps in the **Method statement** below.

Method statement

Step 1

Calculate, in respect of each CGT asset that the company owned at the changeover time, any:

- notional capital gain or notional revenue gain
- notional capital loss or notional revenue loss

in respect of the asset at that time.

> **Note**:The notional calculation is made on the assumption that the company disposed of the asset at its market value at the changeover time. For an asset that is an item of trading stock, if the item's market value at the changeover time:
> - exceeded the latest valuation under Division 70 of ITAA 1997, or
> - the cost of the item at the changeover time—if there is no valuation under Division 70,
>
> the company has a notional revenue gain equal to the excess.

If the item's market value at the changeover time was less than the latest valuation under Division 70 or the cost of the item at the changeover time—if there is no valuation under Division 70—the company has a notional revenue loss equal to the difference.

Step 2

Add up the sum of the company's notional capital gains and the sum of the company's notional revenue gains. The total is the unrealised gross gain at the changeover time.

Step 3

Add up the sum of the company's notional capital losses and the sum of the company's notional revenue losses. The total is the unrealised gross loss at the changeover time.

Step 4

If the unrealised gross loss at the changeover time exceeds the unrealised gross gain at that time, the excess is the company's **preliminary unrealised net loss**.

Step 5

Add up the company's preliminary unrealised net loss and any capital loss or deduction disregarded under Subdivision 170-D of ITAA 1997. The total is the company's unrealised net loss.

Show at label **O** the amount of unrealised net loss the company has at the changeover time.

Print zero '**0**' at label **O** if the company has an unrealised net gain at the changeover time.

> **Note**: The Commissioner of Taxation (Commissioner) may give advice about methods to be used, and other things to be done, in valuing assets for the purposes of Subdivision 165-CC of ITAA 1997.

Part D Life insurance companies

Only those companies that carry on the business of life insurance and that have virtual PST tax losses or virtual PST net capital losses carried forward to later income years complete Part D of the losses schedule.

Virtual PST tax losses carried forward to later income years

The virtual PST component of the complying superannuation class of a life insurance company has a tax loss for the income year if the sum of the virtual PST's assessable income as specified in subsection 320-205(3) of ITAA 1997 is less than the amount of the virtual PST's reductions as specified in subsection 320-205(4) of ITAA 1997.

Show at label **P** the amount of virtual PST tax losses carried forward to later income years.

Virtual PST net capital losses carried forward to later income years

The virtual PST component of the complying superannuation class of a life insurance company has a net capital loss for the income year if the total of all capital gains made from virtual PST assets during the income year is less than the total of all the capital losses made from virtual PST assets during the income year.

Show at label **Q** the amount of virtual PST net capital losses carried forward to later income years.

Part E Loss transfer details—company only

Part E asks for information in relation to all losses transferred between group companies.

The transferee (income or gain) company shows at:

- item 1—Tax losses transferred in, the tax losses transferred to that income company by a group loss company
- item 2—Net capital losses transferred in, the net capital losses transferred to that gain company by a group loss company

The transferor (loss) company shows at:

- item 3—Tax losses transferred out, the tax losses transferred out by that loss company to group income companies
- item 4—Net capital losses transferred out, the net capital losses transferred out by that loss company to group gain companies.

Both the transferor and transferee company are required to complete:

- item 5—Consideration for transfer of loss. That item asks whether or not any consideration was paid, credited or otherwise provided in respect of any of the losses transferred.

Note: If a tax loss or a net capital loss is transferred, both the transferee company and the transferor company must complete a losses schedule and each company shows the details of the loss transfer at the appropriate labels as indicated below.

Transfer of tax losses

A group company may transfer the whole or a part of a tax loss to another group company where the conditions laid down in Subdivision 170-A of ITAA 1997 are satisfied.

For more information refer to Taxation Ruling TR 98/12.

These conditions include the following:

- Both the loss company and the income company must satisfy the continuity of ownership or the same business test.
- The loss company is an Australian resident and not a prescribed dual resident and not a dual resident investment company in either the loss year or the year in which the tax loss is transferred. Refer to section 170-35 of ITAA 1997.
- The income company is a resident company but not a prescribed dual resident company in the income year when the tax loss is transferred. Refer to section 170-40 of ITAA 1997.
- The income company has an excess of income over deductions for the income year in which the tax loss is to be transferred and that excess is equal to or greater than the amount of loss being transferred. Refer to section 170-20 of ITAA 1997.
- Both the loss and income companies satisfy the common ownership test during the loss year and the deduction year and any intervening income years. One company must be a wholly owned subsidiary of the other or alternatively each of the two companies involved must be wholly owned subsidiaries of the same holding company. Refer to sections 170-30 and 975-500 of ITAA 1997.
- The transfer is made under a written agreement between the loss company and the income company that (refer to section 170-50 of ITAA 1997):
  - specifies the income year of the transfer
  - specifies the amount of the tax loss being transferred
  - is signed by the public officer of each company
  - is made on or before the day of lodgment of the income company's tax return for the deduction year, or within such further time as the Commissioner allows.

Note:
- **The tax loss transferred to the income company is deductible to the income company in accordance with the provisions of section 36-15 of ITAA 1997. For example, the tax loss transferred to the income company is first offset against the income company's net exempt income, then against its assessable income.**
- **Tax losses transferred can never be used to create a tax loss.**
- **Tax losses must be transferred in the order in which they were incurred. Refer to section 170-55 of ITAA 1997.**
- **The income company can never transfer any amount of a tax loss transferred to it. Refer to section 170-60 of ITAA 1997.**
- **Consideration received by the tax loss company for the tax loss transfer is neither assessable income nor exempt income of the loss company. Neither does a capital gain accrue to the loss company because of the receipt of the consideration. Refer to section 170-25 of ITAA 1997.**
- **Consideration given by the income company for the tax loss transfer is not deductible to the income company. Neither does the income company incur a capital loss because of the giving of the consideration. Refer to section 170-25 of ITAA 1997.**
- **The Commissioner has power in certain circumstances to amend assessments to disallow a deduction for an amount of transferred tax loss despite section 170 of ITAA 1936. Refer to section 170-70 of ITAA 1997.**

For more information refer to the information on item 7, label **S—Tax losses transferred in** in the *Company tax return 2003 instructions*.

Subdivision 170-C of ITAA 1997 prevents the duplication of a tax loss or net capital loss transferred between wholly owned group companies where a CGT event happens to a direct or indirect interest in the company.

It requires a reduction of the cost base and the reduced cost base of equity interests, and the reduced cost base of debt interests, held directly or indirectly in the loss company in certain circumstances. In some cases, the cost base and reduced cost base of interests held directly or indirectly in either the income or gain company (as applicable) is increased to reflect an increase in their market value because of the transferred loss. Increases are subject to other limitations when losses are transferred after 13 April 2000.

If a subvention payment is made equal to the tax benefit of the loss, there is no cost base and reduced cost base increases. Subdivision 170-C of ITAA 1997 applies where tax losses or net capital losses are transferred under a written agreement made on or after 22 February 1999.

In the case of tax loss transfers, cost base or reduced cost base adjustments are not required in respect of CGT events that happened in relation to shares or debts before 22 February 1999.

Transfer of net capital losses

A loss company can transfer a net capital loss to another company—the gain company—so that the gain company can apply that net capital loss in working out its net capital gain for the income year of the transfer. Both the loss company and the gain company must be members of the same wholly owned group. The transferred loss must be 'surplus' in the sense that, for the income year of the transfer, the transferring company does not have enough capital gains against which to apply it, whilst the other company—the gain company—does have enough capital gains against which to apply it. Refer to section 170-105 of ITAA 1997.

Further requirements must be satisfied by both the loss company and the gain company in relation to matters including:

- residence
- ownership and control
- the making of a written agreement between the companies, and
- the order in which net capital losses may be transferred and the adjustments to cost base.

Refer to Subdivisions 170-B and 170-C of ITAA 1997.

Where a company made a net capital loss in an earlier income year, it can only transfer the loss if the company would not have been prevented from applying the net capital loss under:

- Subdivision 165-CA of ITAA 1997—applying net capital losses of earlier income years (ownership, control and same business rules), or
- Subdivision 175-CA of ITAA 1997—tax benefits from unused net capital losses of earlier income years

had it made enough capital gains in the loss transfer year—the application year.

If a net capital loss was made by the transferring company in the 2002–03 income year, the gain company must not have been required to calculate the net capital loss under either:

- Subdivision 165-CB of ITAA 1997—working out the net capital gain and the net capital loss for the income year of the change (refer to paragraph 170-135(2)(a) of ITAA 1997), or
- Subdivision 175-CB of ITAA 1997—tax benefits from unused capital losses of the 2002–03 income year. Refer to subsection 170-135(2) and section 175-75 of ITAA 1997.

Capital losses from collectables cannot be transferred. For more information refer to subsection 170-105(1) of ITAA 1997.

Net capital losses of a pooled development fund (PDF) are not transferable. For more information refer to sections 195-30 and 195-35 of ITAA 1997.

Note:
- **A CGT schedule may also need to be completed. For more information refer to the publication *Guide to capital gains tax*.**
- **When completing this part, show at labels G, H and I as well as at L, M and N (as applicable) the highest three totals of the loss transfers to or from particular companies—refer to examples 13 and 14 on pages 21–2.**

1 Tax losses transferred in

Note: Do not include net capital losses at item 1—see item 2 on page 23.

Transferor TFN

Show at labels **A**, **B** and **C** the TFNs of those group companies that have transferred any tax losses to the company under Subdivision 170-A of ITAA 1997. If fewer than three companies have transferred tax losses to the company, complete the number of labels required. If more than three companies have transferred tax losses to the company, show the TFNs of the group companies that have transferred the three largest amounts of tax losses. If one company transfers tax losses to the income company under two or more loss transfer agreements, the total amount of the tax loss transfers is treated, for the purposes of completing the losses schedule, as if the combined amount was the one loss transfer for the income year.

Show at labels **G**, **H** and **I**, as required, the amount of tax losses transferred to the company by those group companies whose TFNs are recorded at labels **A**, **B** and **C** respectively.

Other losses transferred in

Show at label **J** the amount of the balance of any tax losses transferred to the company under Subdivision 170-A of ITAA 1997 by group companies. This amount is the total of tax losses transferred, other than those tax loss transfers shown at labels **G**, **H** and **I**.

Total (G + H + I + J)

Show at label **S** the total of tax losses transferred to the company for the 2002–03 income year, being the total of the amounts shown at labels **G**, **H**, **I** and **J**.

> Transfer the amount at label **S** to the corresponding label on your tax return.

> **Note** about the examples for Part E, items 1, 2, 3 and 4:
> All companies satisfied all of the appropriate tests for the tax losses and the net capital losses to be deducted and transferred.

Example 12

A company has tax losses transferred in from two group companies. The details of those loss transfers are as follows:

Group company 1 (TFN 111 111 111)	$700,000
Group company 2 (TFN 222 222 222)	$400,000
Total tax losses transferred in	$1,100,000

The income (transferee) company completes Part E, item 1 as follows:

Label	Transferor TFN	Label	Amount
A	111111111	G	700,000.00
B	222222222	H	400,000.00
C		I	.00
	Other losses transferred in	J	.00
	Total (G + H + I + J)	S	1,100,000.00

> Transfer the amount at label **S**, *$1,100,000*, to the corresponding label on your tax return.

Example 13

A company has tax losses transferred in from five companies. The details of those loss transfers are as follows:

Group company 1 (TFN 111 111 111)	$100,000
Group company 2 (TFN 222 222 222)	$600,000
Group company 3 (TFN 333 333 333)	$700,000
Group company 4 (TFN 444 444 444)	$200,000
Group company 5 (TFN 555 555 555)	$400,000
Total tax losses transferred in	$2,000,000

The income company completes Part E, item 1 as follows:

- At label **G** show the amount transferred from Group company 2 ($600,000).
- At label **H** show the amount transferred from Group company 3 ($700,000).
- At label **I** show the amount transferred from Group company 5 ($400,000).
- As the three largest loss transfers have already been shown at labels **G** to **I** inclusive, show at label **J** the total of all other loss transfers ($100,000 from Group company 1 plus $200,000 from Group company 4—that is, $300,000).

Transferor TFN			
A 222222222		**G**	600,000 .00
B 333333333		**H**	700,000 .00
C 555555555		**I**	400,000 .00
	Other losses transferred in	**J**	300,000 .00
	Total (**G** + **H** + **I** + **J**)	**S**	2,000,000 .00

Transfer the amount at label **S**, *$2,000,000*, to the corresponding label on your tax return.

Example 14

At the end of the year, a number of loss transfers were made to the income (transferee) company. The details of those loss transfers are as follows:

Group company 1 (TFN 111 111 111)	$10,000
Group company 2 (TFN 222 222 222)	$16,000
Group company 1 (TFN 111 111 111)	$2,000
Group company 3 (TFN 333 333 333)	$28,000
Group company 1 (TFN 111 111 111)	$12,000
Group company 4 (TFN 444 444 444)	$20,000
Group company 5 (TFN 555 555 555)	$14,000
Total tax losses transferred in	$102,000

Although each of the transfers from Group company 2, Group company 3, Group company 4 and Group company 5 were greater than the individual amounts transferred from Group company 1, the total of the losses transferred by Group company 1 were greater than those individual amounts transferred by Group company 2 and Group company 5.

The transferee company completes Part E, item 1 as follows:

- Show at label **A** the TFN of Group company 3 (TFN 333 333 333).
- Show at label **G** the amount of tax losses transferred in from Group company 3—that is, $28,000.
- Show at label **B** the TFN of Group company 1 (TFN 111 111 111).
- Show at label **H** the total amount of tax losses transferred in from Group company 1 under the three separate loss transfer agreements—that is, $24,000 ($10,000 + $2,000 + $12,000).
- Show at label **C** the TFN of Group company 4 (TFN 444 444 444).
- Show at label **I** the amount of tax losses transferred in from Group company 4—that is, $20,000.
- Show at label **J** the total amount of tax losses transferred in from Group company 2 and Group company 5—that is, $30,000 ($16,000 + $14,000).
- Show at label **S** the total amount of tax losses transferred in at labels **G**, **H**, **I** and **J**—that is, $102,000.

Transferor TFN			
A 333333333		**G**	28,000.00
B 111111111		**H**	24,000.00
C 444444444		**I**	20,000.00
	Other losses transferred in	**J**	30,000.00
	Total (**G** + **H** + **I** + **J**)	**S**	102,000.00

Transfer the amount at label **S**, *$102,000*, to the corresponding label on your tax return.

2 Net capital losses transferred in

Transferor TFN

Show at labels **D**, **E** and **F** the TFNs of all group companies that have transferred net capital losses to the company under Subdivision 170-B of ITAA 1997. If fewer than three companies have transferred net capital losses to the company, complete the number of labels required.

If more than three companies have transferred net capital losses to the company, show the TFNs of the group companies that have transferred the three largest amounts of net capital losses. If one loss company transfers net capital losses to the gain company under two or more loss transfer agreements, the total amount of the net capital losses transferred under the separate loss transfer agreements are, for the purposes of the completion of the losses schedule, treated as if the total was transferred under the one loss transfer agreement for the year.

Show at labels **L**, **M** and **N**, as required, the amount of net capital losses transferred by the group companies where TFNs are recorded at labels **D**, **E** and **F** respectively.

Other losses transferred in

Show at label **O** the amount of the balance of any net capital losses transferred to the company under Subdivision 170-B by group companies. This amount is the total of the net capital losses transferred, other than those net capital loss transfers shown at labels **L**, **M** and **N**.

Total (L + M + N + O)

Show at label **P** the total of net capital losses transferred to the company for the 2002–03 income year, being the total of the amounts shown at labels **L**, **M**, **N** and **O**.

The amount at label **P** must equal the corresponding label on your CGT schedule, if one is required.

Example 15

A gain company has net capital losses transferred in from two group loss companies as follows:

Group company 1 (TFN 111 111 111)	$300,000
Group company 2 (TFN 222 222 222)	$200,000
Total net capital losses transferred in	$500,000

The gain company completes Part E, item 2 as follows:

- Show at label **D** the TFN of Group company 1 (111 111 111).
- Show at label **L** the amount of net capital losses transferred in from Group company 1—that is, $300,000.
- Show at label **E** the TFN of Group company 2 (222 222 222).
- Show at label **M** the amount of net capital losses transferred in from Group company 2—that is, $200,000.
- Show at label **P** the total amount of net capital losses transferred in at labels **L**, **M**, **N** and **O**—that is, $500,000.

Transferor TFN		Label	Amount
D	111111111	L	300000 .00
E	222222222	M	200000 .00
F		N	.00
	Other losses transferred in	O	
	Total (L + M + N + O)	P	500000 .00

The amount at label **P**, *$500,000*, must equal the corresponding label on your CGT schedule, if one is required.

Example 16

A gain company has net capital losses transferred in from five group loss companies, under separate agreements, as follows:

Group company 1 (TFN 111 111 111)	$300,000
Group company 4 (TFN 444 444 444)	$50,000
Group company 2 (TFN 222 222 222)	$200,000
Group company 3 (TFN 333 333 333)	$100,000
Group company 4 (TFN 444 444 444)	$350,000
Group company 5 (TFN 555 555 555)	$300,000
Total net capital losses transferred in	$1,300,000

The gain company completes Part E, item 2 as follows:

- Show at label **D** the TFN of Group company 1 (111 111 111).
- Show at label **L** the amount of net capital losses transferred in from Group company 1—that is, $300,000.
- Show at label **E** the TFN of Group company 4 (444 444 444) .
- Show at label **M** the total of the separate amounts of net capital losses transferred in from Group company 4 under the two separate loss transfer agreements—that is, $400,000 ($50,000 + $350,000).
- Show at label **F** the TFN of Group company 5 (555 555 555).
- Show at label **N** the amount of net capital losses transferred in from Group company 5—that is, $300,000.
- Show at label **O** the total of net capital losses transferred in from Group companies 2 and 3—that is, $300,000 ($200,000 + $100,000).
- Show at label **P** the total amount of net capital losses transferred in at labels **L**, **M**, **N** and **O**—that is, $1,300,000.

Transferor TFN			
D 111111111		**L**	300,000 .00
E 444444444		**M**	400,000 .00
F 555555555		**N**	300,000 .00
	Other losses transferred in	**O**	300,000 .00
	Total (**L** + **M** + **N** + **O**)	**P**	1,300,000 .00

The amount at label **P**, *$1,300,000*, must equal the corresponding label on your CGT schedule, if one is required.

3 Tax losses transferred out

Transferee TFN

Show at labels **A**, **B** and **C** the TFNs of all group companies to which the loss company has transferred tax losses under Subdivision 170-A of ITAA 1997. If the company has transferred tax losses to fewer than three companies, complete the number of labels required. If the loss company has transferred tax losses to more than three companies, show the TFNs of the group companies to which the loss company has transferred the three largest amounts of tax losses. If the loss company transfers tax losses to an income company under two or more loss transfer agreements, the total amount of the transfers is treated, for the purposes of completing the losses schedule, as if the combined amount was the one loss transfer for the year.

Show at labels **G**, **H** and **I**, as required, the amount of tax losses transferred out by the company to group companies where TFNs are recorded at labels **A**, **B** and **C** respectively.

Other losses transferred out

Show at label **J** the amount of the balance of any tax losses transferred out by the company under Subdivision 170-A of ITAA 1997 to group companies. This amount is the total of the tax losses transferred out, other than those tax loss transfers shown at labels **G**, **H** and **I**.

Total (G + H + I + J)

Show at label **Q** the total of tax losses transferred out, by the company for the 2002–03 income year, being the total of the amounts shown at labels **G**, **H**, **I** and **J**.

Example 17

A loss company transfers out tax losses to two group income companies as follows:

Group company 1 (TFN 111 111 111)	$900,000
Group company 2 (TFN 222 222 222)	$500,000
Total tax losses transferred out	$1,400,000

The loss company completes Part E, item 3 as follows:

- Show at label **A** the TFN of Group company 1 (111 111 111).
- Show at label **G** the amount of tax losses transferred out to Group company 1—that is, $900,000.
- Show at label **B** the TFN of Group company 2 (222 222 222).
- Show at label **H** the amount of tax losses transferred out to Group company 2—that is, $500,000.
- Show at label **Q** the total amount of tax losses transferred out at labels **G**, **H**, **I** and **J**—that is, $1,400,000.

Transferee TFN			
A	111111111	**G**	900,000.00
B	222222222	**H**	500,000.00
C		**I**	.00
	Other losses transferred out	**J**	.00
	Total (G + H + I + J)	**Q**	1,400,000.00

Example 18

A loss company transfers out tax losses to five group income companies, under separate agreements, as follows:

Group company 1 (TFN 111 111 111)	$200,000
Group company 2 (TFN 222 222 222)	$500,000
Group company 3 (TFN 333 333 333)	$500,000
Group company 4 (TFN 444 444 444)	$300,000
Group company 5 (TFN 555 555 555)	$400,000
Group company 2 (TFN 222 222 222)	$100,000
Total tax losses transferred out	$2,000,000

The loss company completes Part E, item 3 as follows:

- Show at label **A** the TFN of Group company 2 (222 222 222).
- Show at label **G** the total amount of tax losses transferred out to Group company 2 under the two separate loss transfer agreements—that is, $600,000 ($500,000 + $100,000).
- Show at label **B** the TFN of Group company 3 (333 333 333).
- Show at label **H** the amount of tax losses transferred out to Group company 3—that is, $500,000.
- Show at label **C** the TFN of Group company 5 (555 555 555).
- Show at label **I** the amount of tax losses transferred out to Group company 5—that is, $400,000.
- Show at label **J** the total amount of tax losses transferred out to Group companies 1 and 4—that is, $500,000 ($200,000 + $300,000).
- Show at label **Q** the total amount of tax losses transferred out at labels **G**, **H**, **I** and **J**—that is, $2,000,000.

Transferee TFN			
A	222222222	**G**	600,000 .00
B	333333333	**H**	500,000 .00
C	555555555	**I**	400,000 .00
	Other losses transferred out	**J**	500,000 .00
	Total (**G** + **H** + **I** + **J**)	**Q**	2,000,000 .00

4 Net capital losses transferred out

Transferee TFN

Show at labels **D**, **E** and **F** the TFNs of all group companies to which the company has transferred net capital losses under Subdivision 170-B of ITAA 1997.

If the company has transferred net capital losses to fewer than three companies, complete the number of labels required. If the company has transferred net capital losses to more than three companies, show the TFNs of the group companies to which the company has transferred the three largest amounts of net capital losses. If the loss company transfers net capital losses to a gain company under two or more loss transfer agreements, the total amount of the net capital losses transferred under the separate loss transfer agreements are, for the purposes of the completion of the losses schedule, treated as if the total was transferred under the one loss transfer agreement for the year.

Show at labels **L**, **M** and **N** the amount of net capital losses transferred out by the company to the group companies where TFNs are recorded at labels **D**, **E** and **F** respectively.

Other losses transferred out

Show at label **O** the amount of the balance of any net capital losses transferred out by the company under Subdivision 170-B of ITAA 1997 to group companies. This amount is the total of the net capital losses transferred out, other than those net capital loss transfers shown at labels **L**, **M** and **N**.

Total (L + M + N + O)

Show at label **K** the total of net capital losses transferred out by the company for the 2002–03 income year, being the total of the amounts shown at labels **L**, **M**, **N** and **O**.

Example 19

A company transfers out net capital losses to two group gain companies as follows:

Group company 1 (TFN 111 111 111)	$400,000
Group company 2 (TFN 222 222 222)	$200,000
Total net capital losses transferred out	**$600,000**

The loss company completes Part E, item 4 as follows:

- Show at label **D** the TFN of Group company 1 (111 111 111).
- Show at label **L** the amount of net capital losses transferred out to Group company 1—that is, $400,000.
- Show at label **E** the TFN of Group company 2 (222 222 222).
- Show at label **M** the amount of net capital losses transferred out to Group company 2—that is, $200,000.
- Show at label **K** the total amount of net capital losses transferred out at labels **L**, **M**, **N** and **O**—that is, $600,000.

Transferee TFN			
D	1 1 1 1 1 1 1 1 1	L	400,000 .00
E	2 2 2 2 2 2 2 2 2	M	200,000 .00
F		N	.00
	Other losses transferred out	O	.00
	Total (L + M + N + O)	K	600,000 .00

Example 20

A loss company transfers out net capital losses to five group gain companies as follows:

Group company 1 (TFN 111 111 111)	$700,000
Group company 2 (TFN 222 222 222)	$900,000
Group company 3 (TFN 333 333 333)	$500,000
Group company 4 (TFN 444 444 444)	$300,000
Group company 5 (TFN 555 555 555)	$100,000
Total net capital losses transferred out	$2,500,000

The loss company completes Part E, item 4 as follows:

- Show at label **D** the TFN of Group company 1 (111 111 111).
- Show at label **L** the amount of net capital losses transferred out to Group company 1—that is, $700,000.
- Show at label **E** the TFN of Group company 2 (222 222 222).
- Show at label **M** the amount of net capital losses transferred out to Group company 2—that is, $900,000.
- Show at label **F** the TFN of Group company 3 (333 333 333).
- Show at label **N** the amount of net capital losses transferred out to Group company 3—that is, $500,000.
- Show at label **O** the total of net capital losses transferred out to Group companies 4 and 5—that is, $400,000 ($300,000 + $100,000).
- Show at label **K** the total amount of net capital losses transferred out at labels **L**, **M**, **N** and **O**—that is, $2,500,000.

Transferee TFN			
D	111111111	**L**	700,000 .00
E	222222222	**M**	900,000 .00
F	333333333	**N**	500,000 .00
	Other losses transferred out	**O**	400,000 .00
	Total (L + M + N + O)	**K**	2,500,000 .00

5 Consideration for transfer of loss

Has any consideration been paid, credited or otherwise provided in respect of any loss transferred?

Complete label **R** if any tax losses or net capital losses have been transferred either to or by the company.

Print **Y** for yes at label **R** if any consideration—subvention receipt or payment (as applicable)—has been paid, credited or otherwise provided in respect of the loss transferred. If more than one loss transfer was made and subvention payments were either made or received (as applicable) in respect of only some of the losses transferred, print **Y** for yes at label **R**.

Print **N** for no at label **R**, if there has been no consideration—subvention receipt or payment (as applicable)—paid, credited or otherwise provided in respect of any amount of loss transferred.

Example 21

Subvention payments are made in respect of some of several transfers of various tax losses and net capital losses between the loss company and both the income company and the gain company.

The loss company, the income company and the gain company print **Y** for yes at label **R**, in their respective losses schedule, if they were a party to the subvention payments. If one of the transferee companies was not a party to the subvention payments, that particular company prints **N** for no at label **R** in its losses schedule.

Part F Foreign source losses

A foreign loss incurred by a taxpayer in an income year, in respect of a class of 'assessable foreign income', can only be used to reduce income of the same class in a later income year. These losses cannot be used to offset income in the other classes or to offset Australian source income.

Note: **For income years beginning on or after 1 July 2001 the calculation of foreign losses excludes debt deductions (except those that are attributable to an overseas permanent establishment). These debt deductions can be applied against Australian source income.**

Broadly, assessable foreign income means:

- foreign income that is included in assessable income for an income year, and
- profits or gains of a capital nature from sources in a foreign country other than capital gains under the CGT provisions.

The excess loss for a class of assessable foreign income may be carried forward indefinitely and used to reduce a later year's assessable foreign income for that class.

However, losses incurred by a company before the 1989–90 income year could only be carried forward for seven years and are therefore no longer available.

Note: **The provisions of Division 170 of ITAA 1997 do not allow foreign source losses to be transferred.**

Calculation of a foreign loss

The amount of the foreign loss is calculated as follows:

- Where no assessable foreign income was derived for a class during the income year, the foreign loss is equal to the total 'foreign income deductions' for that class.
- Where assessable foreign income was derived for a class during the income year, the foreign loss is equal to the excess of 'foreign income deductions' for that class over the assessable foreign income.

A foreign income deduction, in relation to a class of assessable foreign income, is any deduction that is allowed or allowable from assessable income in an income year to the extent that the deduction relates to the assessable foreign income of that class other than:

- certain losses relating to foreign investment funds, and
- debt deductions as defined in section 820-40 of ITAA 1997 (except those debt deductions that are attributable to an overseas permanent establishment).

Capital losses are not included under any of the classes of assessable foreign income, but are included under the CGT provisions.

Debt deductions—for example, interest expense incurred in deriving assessable foreign income—can be claimed against Australian source income and are no longer quarantined to particular classes of assessable foreign income. This means that they are not included in the calculation of a foreign loss. All other deductions, including debt deductions that are attributable to an overseas permanent establishment, are quarantined to particular classes of assessable foreign income. Therefore, these deductions must be included in calculating a foreign loss.

Classes of assessable foreign income

Assessable foreign income is divided into four classes, which are:

- Interest income, including payments in the nature of interest.

  Excluded are:
  - interest that is received in the active conduct of a trade or business—for example, interest on receivables
  - interest derived from money lending, for example, a banking business
  - interest that falls in the offshore banking income class.
- Modified passive income is passive income other than amounts that fall within the interest class or the offshore banking income class.

  Included are:
  - rent
  - royalties
  - dividends
  - annuities
  - capital gains—but not capital gains under the CGT provisions
  - amounts derived from the assignment of, for example, designs, patents or trade marks.
- Offshore banking income is certain income derived through an offshore banking unit.

  Included are:
  - interest, fees and commissions derived in respect of offshore banking transfers
  - dividends paid out of profits derived from the making of offshore banking transfers.
- All other foreign source income comprising amounts that do not fall within the other classes.

Example 22

A company, in the 2002–03 income year, derives:

- modified passive income of $1,000.

During the year the company incurs the following expenses in relation to the modified passive income:

- foreign income deductions of $1,200
- debt deductions of $600 (that are not attributable to an overseas permanent establishment).

The amount of current year foreign loss in relation to the modified passive class of income is $200. That $200 foreign loss is available to be offset against modified passive income in future years.

The debt deductions of $600 are not included in the calculation of the current year foreign loss, and are allowed to be claimed in the current year against any other domestic income.

The calculation of prior year foreign source losses is not affected by the changes to the foreign income deduction definition.

1 Prior year foreign source losses deducted—excludes losses of CFCs

Show at labels **A**, **B**, **C** and **D** the amount of the foreign source loss, if any, that has been claimed as a deduction for each of the four classes of income during the 2002–03 income year.

If the entity has a current year foreign source loss for a particular class of income, do not show this loss at item 1—see item 2 below.

2 Current year foreign source losses—excludes losses of CFCs

Show at labels **E**, **F**, **G** and **H** the amount of current year foreign source loss, if any, relating to each of the four classes of income during the 2002–03 income year.

If the entity has claimed a deduction for a prior year foreign source loss for a particular class of income during the 2002–03 income year, do not show this loss at item 2—see item 1 above.

3 Foreign source losses carried forward—excludes losses of CFCs

Show at labels, **I**, **J**, **K** and **L** the amount of foreign source loss, if any, relating to each of the four classes of income during the 2002–03 income year that is available to be carried forward to later income years.

4 Controlled foreign company (CFC) losses

If the entity has an attribution interest in one or more CFCs with losses brought forward from statutory accounting periods that end within prior income years, or losses from statutory accounting periods that end within the 2002–03 income year, show these amounts at item 4.

For modifications relating to losses of a CFC refer to sections 424 to 431 of ITAA 1936. For information on how to calculate the loss of a CFC refer to the publication *Foreign income return form guide.*

The amounts shown at labels **M**, **N** and **O** are the totals of the entity's share of losses of CFCs. The entity's share of a loss of a CFC is calculated by applying its attribution percentage in the CFC to the loss of the CFC.

Prior year CFC losses deducted

Show at label **M** the total of the entity's share of losses of CFCs, if any, from statutory accounting periods that end within prior income years, that have been claimed as notional allowable deductions for statutory accounting periods that end within the 2002–03 income year.

Current year CFC losses

Show at label **N** the total amount of the entity's share of losses of CFCs, if any, from statutory accounting periods that end within the 2002–03 income year.

CFC losses carried forward

Show at label **O** the total amount of the entity's share of losses of CFCs, if any, that are available to be carried forward to statutory accounting periods that end in later income years.

Abbreviations

ABN	Australian business number
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
CFC	controlled foreign company
film loss(es)	film component of tax loss(es)
ITAA	Income Tax Assessment Act
PDF	pooled development fund
PST	pooled superannuation trust
TFN	tax file number

Taxation Rulings

TR 98/12	Income tax: transfer of losses: section 80G (Subdivision 170-A)
TR 1999/9	Income tax: the operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-32