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Australian Taxation Office

Consolidated groups losses schedule instructions 2006

To help you complete the consolidated groups losses schedule for 1 July 2005 – 30 June 2006

For more information visit **www.ato.gov.au**

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ABOUT THESE INSTRUCTIONS

The *Consolidated groups losses schedule instructions 2006* will help you complete the *Consolidated groups losses schedule 2006*.

When we refer to 'you' or 'your business' in these instructions, we are referring either to you as a business entity – for example, a company – that conducts a business, or to you as the tax agent or public officer responsible for completing the schedule.

This publication is not a guide to income tax law. Please get help from the Tax Office or a recognised tax adviser if you feel this publication does not fully cover your circumstances.

PUBLICATIONS AND SERVICES

To find out how to get a publication referred to in these instructions and for information about our other services, see the inside back cover.

INTRODUCTION

CHANGES TO LOSS RECOUPMENT RULES FOR COMPANIES

The *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005* reforms the loss recoupment rules for companies by:

- introducing a new modified continuity of ownership test (COT), affecting widely held companies and eligible Division 166 companies, to replace the existing modified COT in Division 166 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- removing the same business test (SBT) for companies whose total income is more than $100 million in the year of recoupment, and
- removing certain anomalies and clarifying some aspects of the existing law.

Date of effect

- The new modified COT applies to losses incurred in income years commencing on or after 1 July 2002. It also applies to certain eligible pre 1 July 2002 losses.
- The SBT amendments apply to losses incurred in income years commencing on or after 1 July 2005.
- The other amendments to the loss recoupment rules have a variety of application dates.

Legislation and explanatory memorandums

The loss recoupment rules are contained in the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005* which received Royal Assent on 14 December 2005.

> FURTHER INFORMATION
> Large corporates and multinationals homepage at **www.ato.gov.au**

CHANGES TO AVAILABLE FRACTION

Tax Laws Amendment (2005 Measures No 6) Act 2006 amends the consolidation provisions in ITAA 1997 from 1 July 2002 to allow consolidated groups to round the available fraction for a bundle of losses to the first non-zero digit, if rounding to three decimal places would result in an available fraction of nil.

WHO MUST COMPLETE THE CONSOLIDATED GROUPS LOSSES SCHEDULE 2006?

A head company of a consolidated group or multiple entry consolidated (MEC) group that satisfies any one or more of the following tests must complete the *Consolidated groups losses schedule 2006*, and lodge it with the *Company tax return 2006*:

- it has a total of tax losses and net capital losses carried forward to the 2006–07 income year greater than $100,000
- it has a total of tax losses and net capital losses transferred from joining entities greater than $100,000
- it has a total of tax losses and net capital losses utilised greater than $100,000
- it has a total of foreign source losses carried forward to the 2006–07 income year greater than $100,000
- it has a total of foreign source losses transferred from joining entities greater than $100,000
- it has a total of foreign source losses utilised greater than $100,000
- it has a deduction for earlier year controlled foreign company (CFC) losses greater than $100,000
- it has a total of CFC losses carried forward to later income years greater than $100,000
- it is a life insurance company and has a total of complying superannuation class tax losses and virtual pooled superannuation trust (PST) net capital losses carried forward to the 2006–07 income year greater than $100,000.

A head company may need to complete a *Consolidated groups losses schedule 2006* (the schedule) in respect of certain aspects of its net capital losses. While some of the information requested in the schedule is also requested in the *Capital gains tax (CGT) schedule 2006* (CGT schedule), a head company that completes a consolidated groups losses schedule may also need to complete a CGT schedule.

If the head company completes a *Consolidated groups losses schedule 2006* in respect of any aspect of its losses, it must complete all relevant parts of the schedule. For example, if a head company completes the schedule as a result of having tax losses and capital losses carried forward to later income years greater than $100,000, it must also provide details of foreign source losses even if the total of these losses is not greater than $100,000.

These instructions are based on provisions relating to consolidated groups. Some of those provisions are modified in Division 719 of ITAA 1997 in relation to MEC groups.

COMPLETING THE SCHEDULE

PAGE 1 OF THE SCHEDULE

TAX FILE NUMBER

Print the tax file number (TFN) of the head company.

NAME OF HEAD COMPANY

Print the name of the head company.

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

AUSTRALIAN BUSINESS NUMBER

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

SIGNATURE AS PRESCRIBED IN TAX RETURN

The person who is required to sign, and who signs, the tax return of the head company is also required to sign the *Consolidated groups losses schedule 2006*.

PART A TAX LOSSES AND NET CAPITAL LOSSES CONSOLIDATED – excludes foreign source losses and film losses

1 TAX LOSSES TRANSFERRED FROM JOINING ENTITIES (INCLUDING HEAD COMPANY) AT CONSOLIDATION

! NOTE

- Do not include net capital losses, foreign source losses or film losses at item **1**.
- Show net capital losses transferred from joining entities (including head company) at consolidation at item **6**, and foreign source losses at part E, **Foreign source losses** (see page 29).
- Do not include tax losses if this item was completed in an earlier income year.
- For the definition of a tax loss, see section 995-1 of ITAA 1997.
- Do not include tax losses transferred after consolidation – include these losses at item **2**.

This item requires information on the amount of tax losses, excluding film losses and foreign source losses, transferred from joining entities, including the head company, to the head company at the date the consolidated group has been brought into existence – that is, the date specified in the notice of choice given to the Commissioner of Taxation (Commissioner). See section 703-50 of ITAA 1997.

Record the relevant amount of tax losses transferred at consolidation at **A**, **B** or **C**, depending on which loss transfer test has been satisfied.

When an entity joins a consolidated group as a subsidiary member part way through the entity's income year, it calculates its taxable income or loss for the period up to the time it joins the group. Generally, any unused carry forward losses are transferred to the head company if the losses could have been used by the joining entity, assuming sufficient income or gains, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a shorter period than 12 months. See subsection 707-120(2) of ITAA 1997.

Whether the losses could have been used by the joining entity in the trial year is determined by applying modified versions of the usual tests for deducting and applying losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of ITAA 1997.

Continuity of ownership test losses – companies only

Show at **A** those tax losses that were transferred at consolidation because the continuity of ownership and control tests were satisfied for the ownership test period – that is, from the start of the year when the loss was incurred until immediately after the joining time. See sections 165-12, 165-15 and 707-120 of ITAA 1997.

The following conditions apply:

- 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, and 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. See sections 165-150 to 165-160 of ITAA 1997
- it is reasonable to assume that there are persons (none of them companies or trustees) 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. See sections 165-150 to 165-160 of ITAA 1997
- if the company claims tax losses in an income year ending after 21 September 1999, it must meet the 'same share and interest' requirement, except where the 'saving' rule applies. See section 165-165 and subsection 165-12(7) of ITAA 1997.

A modified version of the above rules can apply to widely held companies and eligible Division 166 companies. See Division 166 of ITAA 1997.

Anti-avoidance provisions are found at Subdivisions 175-A and 175-B of ITAA 1997.

Same business test losses – companies only

Show at **B** those tax losses that were transferred at consolidation where the continuity of ownership or control tests were failed but the joining company satisfied the same business test.

The following table shows how the same business test applies for companies joining a consolidated group. See subsections 707-120(1) and (3) and subsections 707-125(1) to (3) of ITAA 1997.

Same business transfer tests for companies

In these circumstances:	Test the joining entity's business at these points:
1. The joining entity made the loss for an income year starting after 30 June 1999.	■ just before the end of the income year in which the loss was made ■ the year of ownership change if that year started before the trial year, and ■ the trial year. **Note**: Companies whose total income for an income year is more than $100 million cannot satisfy the same business test for the same business test period.
2. The joining entity made the loss for an income year starting before 1 July 1999.	■ just before the ownership or control tests were first failed or, if the company is unable to point to the actual time the ownership test was failed, just before the relevant default test time shown within the table to section 165-13 of ITAA 1997, and ■ the trial year. **Note**: Companies whose total income for an income year is more than $100 million cannot satisfy the same business test throughout the trial year (even if the company carries on the same business).

The year of ownership change is the income year in which the joining entity first fails the ownership or control tests or, if the company is unable to point to the actual time the ownership test was failed, the income year that included the relevant default test time shown in the table to section 165-13 of ITAA 1997.

Where a loss is transferred as a result of satisfying the same business test, it may only be transferred again if – in addition to satisfying the usual transfer tests – the entity transferring the loss carried on the same business at these times:

- just before the end of the income year in which the loss was previously transferred to it, and
- during the trial year.

See subsection 707-135(2) of ITAA 1997.

Under the same business test the company must carry on the same business at all the times indicated in the table above – that is, throughout the trial year and year of ownership change (if applicable) and other relevant time. The test is not satisfied if at any time the company did not carry on the same business as it did at another required time or it derives assessable income from:

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

'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.

However, 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, see sections 165-13 and 165-210 of ITAA 1997, Taxation Ruling TR 1999/9 and Draft Taxation Ruling TR 2006/D4.

Other losses – trusts only

Show at **C** those tax losses that were transferred at consolidation from a trust.

The trust loss legislation in Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936) affects the deductibility of prior year losses by trusts.

The measures generally apply from 7.30pm Australian Eastern Standard Time on 9 May 1995. The legislation applies to two broad categories of trusts:

- fixed trusts – see section 272-65 of Schedule 2F to ITAA 1936
- non-fixed trusts (including discretionary trusts) defined in section 272-70 of Schedule 2F to ITAA 1936.

Fixed trusts are subject to the 50% stake test which tests for continuity of interests in the trust during the relevant periods. See Subdivision 269-C of Schedule 2F to ITAA 1936.

The relevant test period for transfer purposes ends when the trial year ends immediately after joining time.

Non-fixed trusts, which are not excepted trusts, are subject to:

- the 50% stake test – if applicable
- the control test – see Subdivision 269-E of Schedule 2F to ITAA 1936, and
- the pattern of distributions test – see Subdivision 269-D of Schedule 2F to ITAA 1936 – if applicable.

See Division 267 of Schedule 2F to ITAA 1936 in relation to the ownership and control tests that apply to non-fixed trusts.

The control test is applied as though the test period ended immediately **after** the joining time.

Where the pattern of distributions test is applied as a transfer test, the income year in which the trust joins the consolidated group is treated as the recoupment year instead of the trial year. See subsection 707-130(2) of ITAA 1997.

A distribution made by a trust after the time it joins a consolidated group is not counted in determining if the pattern of distributions test is passed as a transfer test, if the distribution is made from income or capital of the trust that is attributable to a time after the joining time. See subsection 707-130(4) of ITAA 1997.

For more information, see appendix 8 in the *Partnership and trust tax returns instructions 2006* (NAT 2297–6.2006).

EXAMPLE 1

A consolidated group comes into existence on 1 July 2005. During the 2005–06 income year the following tax losses are transferred to the head company from joining entities which pass the loss transfer tests indicated.

Joining entity	Joining time	Tax loss amount $	Transfer test passed		
			Continuity of ownership	Same business	Other
A Company	1.7.2005	1,500	✓		
B Company	1.7.2005	3,200	X	✓	
C Company	3.2.2006	4,600	✓		
X Fixed trust	1.7.2005	1,800			✓
Y Non-fixed trust	1.7.2005	3,100			✓

The head company completes part A, item **1** on the schedule as follows:

Continuity of ownership test losses	**A**	1,500.00
Same business test losses	**B**	3,200.00
Other losses	**C**	4,900.00

As C Company transferred its continuity of ownership tax losses after consolidation, the amount transferred is recorded at **D** item **2**.

2 TAX LOSSES TRANSFERRED FROM JOINING ENTITIES AFTER CONSOLIDATION

NOTE

- Do not include net capital losses, foreign source losses or film losses at item **2**.
- Show net capital losses transferred from joining entities after consolidation at item **7**, and foreign source losses at part E, **Foreign source losses** (see page 29).
- Do not include tax losses transferred at consolidation – include these losses at item **1**.
- Do not include tax losses transferred in an earlier income year.
- For the definition of a tax loss, see section 995-1 of ITAA 1997.

This item requires information on the amount of tax losses, excluding film losses and foreign source losses, transferred from joining entities to the head company **after** the date the consolidated group has been brought into existence – that is, the date specified in the notice of choice given to the Commissioner. See section 703-50 of ITAA 1997.

Record the relevant amount of tax losses transferred during the income year at **D**, **E** or **F** depending on which loss transfer test has been satisfied.

When an entity joins a consolidated group, it calculates its taxable income or loss for the period up to the time it joins the group. Generally, any unused carry forward losses are transferred to the head company if the losses could have been used by the joining entity, assuming it had sufficient income or gains, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a shorter period than 12 months. See subsection 707-120(2) of ITAA 1997.

Whether the losses could have been used by the joining entity in the trial year is determined by applying modified versions of the usual tests for deducting and applying losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of ITAA 1997.

Continuity of ownership test losses – companies only

Show at **D** those tax losses that were transferred after consolidation because the continuity of ownership and control tests were satisfied from the start of the year when the loss was incurred until immediately after the joining time. For more information on the continuity of ownership and control tests, see **1 Tax losses transferred from joining entities (including head company) at consolidation** in part A on page 2.

Same business test losses – companies only

Show at **E** those tax losses that were transferred after consolidation because the continuity of ownership or control tests were failed but the joining company satisfied the same business test. For more information on the same business test, see **1 Tax losses transferred from joining entities (including head company) at consolidation** in part A on page 2.

Other losses – trusts only

Show at **F** those tax losses that were transferred after consolidation by a trust. For more information on the trust loss legislation, see **1 Tax losses transferred from joining entities (including head company) at consolidation** in part A on page 2.

EXAMPLE 2

A consolidated group comes into existence on 1 July 2005. During the 2005–06 income year the following tax losses are transferred to the head company from joining entities which pass the loss transfer tests indicated.

Joining entity	Joining time	Tax loss amount $	Transfer test passed		
			Continuity of ownership	Same business	Other
X Company	1.7.2005	1,800	X	✓	
Y Company	2.7.2005	2,300	X	✓	
Z Company	3.2.2006	7,800	✓		
A Fixed trust	8.6.2006	1,100			✓
B Non-fixed trust	8.6.2006	4,500			✓

The head company completes part A, item **2** on the schedule as follows:

Continuity of ownership test losses	**D**	7,800.00
Same business test losses	**E**	2,300.00
Other losses	**F**	5,600.00

As X Company's same business tax losses were transferred at consolidation, the amount transferred is recorded at **B** item **1**.

3 TAX LOSSES UTILISED

NOTE

- Do not include net capital losses, foreign source losses or film losses utilised at item **3**.
- Show net capital losses utilised at item **8**, and foreign source losses utilised at part E, **Foreign source losses** (see page 29).
- For the definition of a tax loss, see section 995-1 of ITAA 1997.

This item requires information on the amount of tax losses, excluding film losses and foreign source losses, utilised. A head company utilises a tax loss to the extent it is deducted from an amount of the head company's assessable income or net exempt income.

Subject to certain limitations, corporate tax entities can choose the amount of prior year losses they wish to deduct from the excess, if any, of their assessable income over total deductions (other than tax losses) in a later year of income. This also means that corporate tax entities can choose not to deduct prior year losses in order to pay sufficient tax to be able to frank their distributions. See Division 36 of ITAA 1997.

Subject to various rules, an earlier year tax loss is deducted in a later income year – to the extent that it has not already been utilised – as shown by the following formulae:

- If the head company 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. See subsection 36-17(2) of ITAA 1997.
- If the head company 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, and deduct any remaining amount of tax loss from the excess assessable income. See subsection 36-17(3) of ITAA 1997.
- If the head company 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. See subsection 36-17(4) of ITAA 1997.

A head company's net exempt income is calculated in accordance with section 36-20 of ITAA 1997.

A head company may be entitled to utilise carry forward losses broadly comprising:

- losses generated by the consolidated group – group losses, or
- transferred losses that were generated by an entity before it became a member of the group.

Before utilising a group loss or a transferred loss, a head company is required to pass the continuity of ownership and control tests or the same business test. For more information on the conditions applying to the continuity of ownership test, see **1 Tax losses transferred from joining**

entities (including head company) at consolidation in part A on page 2. For more information on the same business test, see sections 165-13 and 165-210 of ITAA 1997 and Taxation Ruling TR 1999/9.

Transferred losses

The operation of the continuity of ownership test is modified by Subdivision 707-B of ITAA 1997. Firstly, the loss year is modified so that it starts from when the loss was transferred to the head company (however, subsection 707-140(2) of ITAA 1997 provides that the head company is not prevented from utilising the loss for the income year in which the transfer occurs). Secondly, in determining whether a head company can use a loss transferred to it from a company as a result of passing the continuity of ownership and control tests, changes in ownership of a loss company before it joined the consolidated group are recognised. See section 707-210 of ITAA 1997.

Tax losses generated by a consolidated group – group losses – are effectively utilised before transferred tax losses. See paragraph 707-310(3)(b) of ITAA 1997.

Concessional tax losses are used after group tax losses and are effectively used before other transferred tax losses. See subsection 707-350(2) of the *Income Tax (Transitional Provisions) Act 1997*.

All losses transferred to a head company for the first time from the entity that actually made them constitute a bundle of losses. Losses within the bundle will be categorised by the 'sort of loss' such as a tax loss or net capital loss. See section 707-315 of ITAA 1997.

Available fraction

Work out an available fraction for each loss bundle. The available fraction limits the annual rate at which the bundle's losses may be recouped by the head company. However, for utilisation purposes, losses in one bundle may be subject to the available fraction for another loss bundle if certain conditions are satisfied (see **Increasing the available fraction – value donor concession** on page 7).

Where losses are transferred for the first time, the available fraction is calculated like this:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

The modified market value of a joining entity is the amount that would be the market value of the entity at the joining time if:

- the entity has no losses and the balance of its franking account is nil
- the subsidiary members of the group at the time are separate entities and not divisions or parts of the head company of the group
- the entity's market value did not include an amount attributable (directly or indirectly) to a membership interest in a member of the group (other than the entity) that is a corporate tax entity or an entity that transferred losses to the head company, and
- a trust (other than a corporate tax entity or a trust with losses) contributes to the joining entity's market value only to the extent attributable to fixed entitlements (at joining time) to income or capital of the trust that is not attributable (directly or indirectly) to membership interests in another member of the group that is a corporate tax entity or a trust with losses.

See section 707-325 of ITAA 1997.

An increase in the value of the loss entity is excluded from the entity's modified market value if the increase results from either of these events:

- an injection of capital into the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee, or
- a non-arm's length transaction that involved the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee.

The rules apply to events that occur in the four years before the loss entity joins the group. However, they do not apply to events that occurred before 9 December 2000. See subsections 707-325(2) and (4) of ITAA 1997, section 707-329 of the *Income Tax (Transitional Provisions) Act 1997*.

The head company's adjusted market value at the initial transfer time is the amount that would be the market value at that time if:

- the head company did not have a loss of any sort for an income year ending before that time, and
- the balance of the head company's franking account was nil at that time.

See subsection 707-320(1) of ITAA 1997. The value for the head company is worked out on the basis that subsidiary members of the consolidated group are part of the head company.

NOTE

The Commissioner will have a statutory obligation to ensure compliance with the market valuation requirements of the consolidation regime and to form a view as to whether valuations undertaken are accurate. The publication *Consolidation and market valuation* (NAT 7803) will help you meet your tax obligations.

The available fraction may be increased if the value donor concession applies. The available fraction is adjusted if certain events happen – for example, the consolidated group acquires a new loss entity or the sum of the available fractions in the group exceeds 1. See subsection 707-320(2) of ITAA 1997.

The use of transferred losses is apportioned if their available fraction applied for only part of the income year or when the available fraction changes during the income year. See section 707-335 of ITAA 1997.

Apply the available fraction using a three-step process as follows:

1 Work out the amount of each category of the group's income or gains as specified in column 2 of the table in subsection 707-310(3) of ITAA 1997. This is the group's total income or gains for each category less relevant deductions including group losses and concessional losses (but not transferred losses whose use is limited by their available fraction).
2 Multiply each category amount by the bundle's available fraction. The result is taken to be the head company's only income or gains for that category.
3 On the basis of the step 2 assumption, work out a notional taxable income for each loss bundle.

This process enables the head company to determine the amount of transferred losses of each sort it can use from the loss bundle to determine its actual taxable income.

Tax losses must first be deducted against exempt income. A special rule provides that the head company, in working out its actual taxable income, can offset its transferred tax losses against assessable income provided they have been first utilised against a fraction of its total exempt income. See section 707-340 of ITAA 1997.

> **!** NOTE
> An example applying the available fraction using the three-step process is on page 22.

Increasing the available fraction – value donor concession

A loss entity (the 'real loss-maker'), in calculating its available fraction, may add to its modified market value the modified market value of another company (the 'value donor'). Certain losses from the value donor can also be notionally transferred to the real loss-maker. This enables those losses to be utilised using the available fraction for the real loss-maker. Only company losses may benefit from the concession to donate value and losses.

The conditions for adding an amount of modified market value from the value donor to the real loss-maker are as follows:

- Both the real loss-maker and the value donor join the group when it first consolidates before 1 July 2004.
- The real loss-maker has a 'test loss' – a tax loss or net capital loss that is **not** a concessional loss.
- The real loss-maker could have transferred its test loss to the value donor under Subdivision 170-A or 170-B of ITAA 1997 (assuming those Subdivisions had not been amended to provide only for transfers involving an Australian branch of a foreign bank) for an income year – generally the trial year.
- The value donor – assuming it had made the test loss – could have transferred it to the head company under Subdivision 707-A.
- The head company chooses to increase the real loss-maker's modified market value by a portion of the value donor's modified market value.

See subsections 707-325(1) and (2) of the *Income Tax (Transitional Provisions) Act 1997*.

The increase in the modified market value of the real loss-maker is worked out using a formula. See subsections 707-325(3) and (4) of the *Income Tax (Transitional Provisions) Act 1997*.

The conditions for donating losses from the value donor (referred to here as the 'loss donor') to the real loss-maker are as follows:

- The loss donor has also donated an amount of modified market value to the real loss-maker (in certain circumstances the amount can be nil).
- The loss to be donated is a tax loss or a net capital loss that is not a concessional loss.
- The loss was transferred under Subdivision 707-A from the loss donor to the head company at the time when the consolidated group came into existence.
- The loss donor could have transferred the loss to the real loss-maker, and any other value donor to the real loss-maker, under Subdivision 170-A or 170-B of ITAA 1997 (assuming those Subdivisions had not been amended to provide only for transfers involving an Australian branch of a foreign bank) for an income year – generally the trial year.
- The real loss-maker – and any other value donor of the real loss-maker – could have transferred the loss to the head company under Subdivision 707-A.
- The head company chooses that the loss be included in the real loss-maker's bundle.

See subsections 707-327(1), (2) and (3) of the *Income Tax (Transitional Provisions) Act 1997*.

Where a loss is donated, the group's use of the loss is governed by the real loss-maker's available fraction.

A loss can only be taken into account under either the value donor rule or the loss donor rule but not both. See subsection 707-327(6) of the *Income Tax (Transitional Provisions) Act 1997*.

A choice to donate losses must be made by the head company by the later of either:

- the day it lodges its income tax return for the first income year for which it uses transferred losses by the available fraction method, or
- 31 December 2005.

When applying Subdivisions 170-A or 170-B for the purposes of the value donor and loss donor rules, the income year is modified and certain conditions apply. See section 707-328 of the *Income Tax (Transitional Provisions) Act 1997*.

> **!** NOTE
> An example applying the value donor and loss donor concessions is on page 23.

Group

Show at **G** the amount of group tax losses utilised.

Group tax losses are those tax losses that have been generated by the consolidated group. Group tax losses are, effectively, utilised before transferred tax losses. Show transferred tax losses utilised at either **H** or **I**, as appropriate.

Concessional

A transferred tax loss, in a particular loss bundle, may be used in accordance with the concessional method if the loss meets certain conditions and the head company has chosen to use the concessional method for **all** losses in the bundle that meet these conditions. The conditions are that the tax loss:

- was originally made outside the consolidated group by a company – the real loss-maker – for an income year ending on or before 21 September 1999
- was transferred from the real loss-maker to the head company of the group when the group first consolidates before 1 July 2004
- was transferred because the continuity of ownership and control tests were passed, and
- had not been previously transferred to a group.

See subsection 707-350(1) of the *Income Tax (Transitional Provisions) Act 1997*.

Concessional losses may be utilised by the head company over three years, subject to the general loss recoupment tests as modified. See subsection 707-350(3) of the *Income Tax (Transitional Provisions) Act 1997*. This limit on utilisation replaces that which would otherwise apply under the available fraction method.

Tax losses claimed on a concessional basis are effectively utilised before other transferred tax losses. Group tax losses must be utilised before concessional losses. Show at **H** the amount of concessional tax losses utilised.

Other transferred

Show at **I** the amount of other transferred tax losses utilised. Other transferred tax losses are tax losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Show transferred tax losses utilised on a concessional basis at **H**.

Total

Show at **R** the total of tax losses utilised at **G** to **I**.

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

EXAMPLE 3

ABC consolidated group comes into existence on 1 July 2003. On that date, tax losses of $1,500 are transferred to the head company from joining entities which satisfy the continuity of ownership and control transfer tests. No other losses are transferred to the head company. ABC group determines that $600 of the tax losses transferred satisfy the conditions for use of the concessional method and the head company makes a choice to apply this method for all the eligible losses. The balance of the losses transferred ($900) is to be utilised applying the available fraction method.

Up to the 2004–05 income year, ABC group utilised tax losses transferred of $400 – two-thirds of the total amount transferred – applying the concessional method in the first two income years ending after the initial transfer time. Tax losses of $200, applying the concessional method, were carried forward to the 2005–06 income year. Tax losses of $500, applying the available fraction method, were carried forward to the 2005–06 income year.

For the 2005–06 income year, ABC group has assessable income of $1,950 and deductions of $250. The head company satisfies the relevant loss recoupment tests in respect of all the transferred tax losses. ABC group has calculated that it is able to use $30 of the transferred tax losses applying the available fraction method.

For the 2005–06 income year, ABC group determines its taxable income as follows:

Assessable income	$	Deductions	$
Net capital gain	0	Deductions	250
Other assessable income	1,950	Concessional tax losses	200
		Transferred tax losses	30
Total	1,950	Total	480

ABC group's taxable income is $1,470 (that is, $1,950 – $480).

- Tax losses transferred of $200 – the total amount transferred ($600) less amount of concessional losses utilised up to 2004–05 ($400) – can be utilised applying the concessional method in the third income year ending after the initial transfer time.
- There are no tax losses, applying the concessional method, to be carried forward to the 2006–07 income year. Tax losses of $470 ($500 – $30) applying the available fraction method can be carried forward to the 2006–07 income year.

For the 2006–07 income year, the head company completes part A, item **3** on the schedule as follows:

Group	**G**		.00
Concessional	**H**	200	.00
Other transferred	**I**	30	.00
Total	**R**	230	.00 F

4 TRANSFERRED TAX LOSSES UTILISED

NOTE

- Do not include transferred tax losses utilised in accordance with the concessional method which allows the head company to utilise tax losses over three years where certain conditions are met.
- Do not include group tax losses – losses generated by a consolidated group – utilised at item **4**.
- Do not include transferred net capital losses, foreign source losses or film losses utilised at item **4**.
- Show transferred net capital losses utilised at item **9**, and foreign source losses at part E, **Foreign source losses** (see page 29).
- For the definition of a tax loss, see section 995-1 of ITAA 1997.
- If donated tax losses have been utilised, see the note **Donated tax losses** on the next page.

This item requires information on the amount of transferred tax losses utilised, excluding net capital losses, foreign source losses and film losses. A head company utilises a transferred tax loss to the extent it is deducted from an amount of the head company's assessable income or exempt income.

Show at **A**, **D**, **G**, **J**, **M** and **P**, as required, the TFNs of those joining entities that had tax losses from their loss bundles utilised by applying the available fraction method. A bundle of losses consists of all the losses of a joining entity that are transferred to the head company at the same time.

If tax losses have been utilised in respect of six or fewer loss bundles, complete the number of labels required. If tax losses have been utilised in respect of more than six loss bundles, show the joining entity TFNs for those loss bundles that had the six largest amounts of tax losses utilised.

Show at **B**, **E**, **H**, **K**, **N** and **Q**, as required, the corresponding available fractions calculated for the loss bundles for joining entities whose TFNs are recorded at **A**, **D**, **G**, **J**, **M** and **P** respectively. However, if tax losses in a loss bundle are utilised with different available fractions (because losses have been 'donated' to other loss bundles), each of the amounts utilised is to be considered separately (see the note **Donated tax losses** on the next page).

Each available fraction is to be completed to three decimal places (for example, 0.475, 0.520, 0.700).

Where losses are transferred for the first time, the available fraction is calculated like this:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

For details of how the modified market value of the joining loss entity and adjusted market value of the head company are determined, see **3 Tax losses utilised** in part A on page 5.

Calculate available fractions, then adjust them to three decimal places. Round up the third decimal place if the fourth decimal place is 5 or more.

Where an available fraction has been adjusted as a result of certain events – for example, a new member joined the group and transferred a loss bundle – show the adjusted available fraction applicable at the end of the year of income.

An available fraction cannot be a negative amount or greater than one. If the sum of the group's available fractions would total more than one, each available fraction is proportionally reduced. See subsection 707-320(2) of ITAA 1997.

The available fraction for a bundle is adjusted or maintained when one of five adjustment events listed in the table in section 707-320(2) of ITAA 1997 occurs.

For more information about the calculation of the available fraction, see **3 Tax losses utilised** in part A on page 5.

Where the available fraction of a loss bundle has been increased as a result of one company – the value donor – donating value to a loss company, show the increased available fraction.

For more information on the value donor concession, see **3 Tax losses utilised** in part A on page 5.

Show at **C**, **F**, **I**, **L**, **O** and **R**, as required, the corresponding amount of transferred tax losses utilised from loss bundles of joining entities whose TFNs are recorded at **A**, **D**, **G**, **J**, **M** and **P**, respectively. If tax losses have been utilised from more than six loss bundles, show the six largest amounts utilised.

DONATED TAX LOSSES

- If one company – the value/loss donor – has donated some of its tax losses to another loss company – the real loss-maker – so that they can be used by the group in accordance with the real loss-maker's available fraction, do not include the amount of donated tax losses in the amounts shown for real loss-makers at **C**, **F**, **I**, **L**, **O** and **R**, as required.
- Show donated tax losses utilised with the TFN of the value/loss donor company, not the real loss maker. The available fraction recorded for the value/loss donor in respect of tax losses donated is the available fraction of the real loss-maker company, not the value/loss donor's available fraction.
- If a value/loss donor company has both donated tax losses utilised and non-transferable tax losses utilised, multiple entries are required for the value/loss donor company. Show the donated tax losses utilised with the available fraction of the real loss-maker. Show the non-transferable tax losses utilised with the available fraction of the value/loss donor.

For more information about donating losses, see **Increasing the available fraction – value donor concession** (item **3** in part A) on page 7.

EXAMPLE 4

A wholly owned group consists of a head company, H Co, and two subsidiary companies – A Co and B Co. The group consolidates on 1 July 2003.

Tax losses were transferred from A Co and B Co to H Co at the time the group was formed on 1 July 2003.

It was determined that the conditions for the value donor concession were satisfied. Modified market value has been donated to A Co from both H Co and B Co The available fractions that were worked out, after applying the value donor concession, are:

A	B
0.900	0.100

Details of subsidiary losses carried forward and companies to which they could have been transferred (assuming Subdivisions 170-A and 170-B of ITAA 1997 had not been amended to provide only for transfers involving an Australian branch of a foreign bank) are as follows:

Co	Transferor TFN	Tax loss carried forward to 2005–06	Transferable to:		
			H Co	A Co	B Co
A	222 222 222	1,000	✓		✓
B	333 333 333	300	✓	✓	
		250	X	X	

It was also determined that B Co satisfied the loss donor conditions and its transferable tax loss was donated to A Co to be used in accordance with A Co's increased available fraction. $300 of this loss was carried forward to the 2005–06 income year.

For the 2005–06 income year, the consolidated group has assessable income of $2,200 and deductions of $200. There are no capital gains or assessable foreign or film income. The available fraction amount for each bundle is as follows:

Loss bundle	Income amount $	Multiplied by available fraction	Available fraction amount for bundle ($)
A Co	2,000	0.900	1,800
B Co	2,000	0.100	200

The consolidated group can therefore utilise all of the tax losses in A Co's bundle ($1,000) and can also utilise all of B Co's transferable tax loss ($300) because it is used in accordance with A Co's increased available fraction. B Co's non-transferable tax loss ($250) can only be utilised to the extent of $200.

The head company completes part A, item **4** on the schedule as follows:

	Transferor TFN		Available fraction		
A	222222222	B	0·900	C	1,000.00
D	333333333	E	0·900	F	300.00
G	333333333	H	0·100	I	200.00
J		K	·	L	.00
M		N	·	O	.00
P		Q	·	R	.00

EXAMPLE 5

A consolidated group determines the following amounts of tax losses utilised from eight loss bundles for the 2005–06 income year:

Co	Transferor TFN	Available fraction	Tax losses utilised $
A	111 111 111	0.105	5,250
B	222 222 222	0.311	4,100
C	333 333 333	0.132	2,350
D	444 444 444	0.183	4,730
E	555 555 555	0.095	1,300
F	666 666 666	0.009	25
G	777 777 777	0.154	3,405
H	888 888 888	0.000	2,100

H Co and B Co have satisfied the value donor and loss donor conditions. H Co has donated its entire modified market value to B Co and also donated transferable losses to B Co, the real loss-maker. B Co's increased available fraction is 0.311 and H Co's reduced available fraction is 0.000.

The head company completes part A, item **4** on the schedule as follows:

	Transferor TFN		Available fraction		
A	111111111	B	0·105	C	5,250·00
D	222222222	E	0·311	F	4,100·00
G	333333333	H	0·132	I	2,350·00
J	444444444	K	0·183	L	4,730·00
M	777777777	N	0·154	O	3,405·00
P	888888888	Q	0·311	R	2,100·00

Information has been recorded for the loss bundles that had the six largest amounts of tax losses utilised.

H Co's donated tax losses are shown against **its** TFN, not the TFN of the real loss-maker, B Co. The available fraction recorded for the value/loss donor, H Co, in respect of tax losses donated is the increased available fraction of the real loss-maker company, B Co, **not** H Co's reduced available fraction of nil.

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5 TAX LOSSES CARRIED FORWARD TO LATER INCOME YEARS

NOTE

- Do not include net capital losses, foreign source losses or film losses carried forward to later income years at item **5**.
- Show net capital losses carried forward to later income years at item **10**, and foreign source losses at part E, **Foreign source losses** (see page 29).
- For the definition of a tax loss, see section 995-1 of ITAA 1997.
- The head company must keep a record of its tax losses and account for any adjustments including those made by the Tax Office. These records must be retained for five years after the end of the year in which the loss was fully utilised.
- If required, the head company must be able to demonstrate not only the balance of any tax losses being utilised or carried forward, but also how those tax losses arose.

Group

Show at **S** the amount of group tax losses carried forward to later income years under section 36-17 of ITAA 1997. Group tax losses are those tax losses that have been generated by the consolidated group.

Show transferred tax losses carried forward to later income years at either **T** or **V**, as appropriate.

Concessional

Show at **T** the amount of concessional tax losses carried forward to later income years under section 36-17 of ITAA 1997. Concessional tax losses are tax losses that meet certain conditions and may be utilised by the head company over three years, subject to the general loss recoupment tests as modified.

For more information, see **3 Tax losses utilised** in part A on page 5.

If the head company wishes to use the concessional method it must choose to do so by the later of:
- the day it lodges its income tax return for the income year in which it could first use any of its transferred losses, or
- 31 December 2005.

The choice, if made, must be for all eligible losses in a particular bundle. Where a head company has not made a choice whether to use the concessional method in respect of transferred losses meeting the relevant conditions, show the amount of these losses carried forward to later income years at **V**.

Other transferred

Show at **V** the amount of other transferred tax losses carried forward to later income years under section 36-17 of ITAA 1997. Other transferred tax losses are tax losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Where a choice has been made to use the concessional method in respect of eligible transferred losses, show the amount of these losses at **T**.

Total

Show at **U** the total of tax losses carried forward to later income years at **S** to **V**.

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

> **NOTE**
>
> The loss wastage rules apply in relation to amounts that are included in **U** item **11** on the company tax return. For more information on how this amount is calculated, see Tax losses carried forward to later income years at **11 Losses information** in the *Company tax return instructions 2006* (NAT 0669–6.2006).

EXAMPLE 6

AAA consolidated group comes into existence on 1 July 2003. On that date tax losses of $2,500 are transferred to the head company from joining entities which satisfy the continuity of ownership and control transfer tests. No other losses are transferred to the head company. AAA group determines that $900 of the tax losses transferred satisfy the conditions for use of the concessional method and the head company makes a choice to apply this method for all the eligible losses. The balance of the losses transferred ($1,600) is to be utilised applying the available fraction method.

Up to the 2004–05 income year, the head company of the AAA group utilised $600 of the transferred tax losses using the concessional method and $800 of the transferred tax losses applying the available fraction method.

For the 2005–06 income year, the head company of the AAA group makes a group loss of $500 and is not able to use any of the transferred tax losses.

The head company completes part A, item **5** on the schedule as follows:

Group	S	500.~~00~~
Concessional	T	300.~~00~~
Other transferred	V	800.~~00~~
Total	U	1,600.~~00~~

6 NET CAPITAL LOSSES TRANSFERRED FROM JOINING ENTITIES (INCLUDING HEAD COMPANY) AT CONSOLIDATION

> **NOTE**
>
> - Do not include tax losses, film losses or foreign source losses at item **6**.
> - Show tax losses transferred from joining entities (including head company) at consolidation at item **1**, and foreign source losses at part E, **Foreign source losses** (see page 29).
> - Do not include net capital losses transferred after consolidation – include these losses at item **7**.
> - Net capital loss has the meaning given by sections 102-10 and 165-114 of ITAA 1997.
> - Do not include net capital losses if this item was completed in an earlier income year.

This item requires information on the amount of net capital losses, transferred from joining entities, including the head company, to the head company at the date the consolidated group has been brought into existence – that is, the date specified in the notice of choice given to the Commissioner. See section 703-50 of ITAA 1997.

Record the relevant amount of net capital losses transferred at consolidation against **A**, **B** or **C**, depending on which loss transfer test, if any, has been satisfied.

When an entity joins a consolidated group as a subsidiary member part way through the entity's income year, it calculates its taxable income or loss for the period up to the time it joins the group. Generally, any unused carry forward losses are transferred to the head company if the losses could have been used by the joining entity, assuming sufficient income or gains, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a shorter period than 12 months. See subsection 707-120(2) of ITAA 1997.

Whether the losses could have been used by the joining entity in the trial year is determined by applying modified versions of the usual tests for deducting and applying losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of ITAA 1997.

Continuity of ownership test losses – companies only

Show at **A** those tax losses that were transferred at consolidation because the continuity of ownership and control tests were satisfied for the ownership test period – that is, from the start of the year when the loss was incurred until immediately after the joining time. See sections 165-12, 165-15 and 707-120 of ITAA 1997.

The following conditions apply:
- 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, and 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. See sections 165-150 to 165-160 of ITAA 1997.
- It is reasonable to assume that there are persons (none of them companies or trustees) 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. See 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. See section 165-165 and subsection 165-12(7) of ITAA 1997.
- A modified version of the above rules can apply to widely held companies and eligible Division 166 companies. See Division 166 of ITAA 1997.

Anti-avoidance provisions are at Subdivisions 175-A and 175-B of ITAA 1997.

Same business test losses – companies only

Show at **B** those tax losses that were transferred at consolidation where the continuity of ownership or control tests were failed but the joining company satisfied the same business test.

The following table shows how the same business test applies for companies joining a consolidated group. See subsections 707-120(1) and (3) and subsections 707-125(1) to (3) of ITAA 1997.

Same business transfer tests for companies

In these circumstances:	Test the joining entity's business at these points:
1. The joining entity made the loss for an income year starting after 30 June 1999.	■ just before the end of the income year in which the loss was made ■ the year of ownership change if that year started before the trial year, and ■ the trial year. **Note**: Companies whose total income for an income year is more than $100 million cannot satisfy the same business test for the same business test period.
2. The joining entity made the loss for an income year starting before 1 July 1999.	■ just before the ownership or control tests were first failed or, if the company is unable to point to the actual time the ownership test was failed, just before the relevant default test time shown within the table to section 165-13 of the ITAA 1997, and ■ the trial year. **Note**: Companies whose total income for an income year is more than $100 million cannot satisfy the same business test throughout the trial year (even if the company carries on the same business).

The year of ownership change is the income year in which the joining entity first fails the ownership or control tests or, where the company is unable to point to the actual time the ownership test was failed, the income year that included the relevant default test time shown in the table to section 165-13 of ITAA 1997

Where a loss is transferred as a result of satisfying the same business test, it may only be transferred again if – in addition to satisfying the usual transfer tests – the entity transferring the loss carried on the same business at these times:
- just before the end of the income year in which the loss was previously transferred to it, and
- during the trial year.

See subsection 707-135(2) of ITAA 1997.

Under the same business test the company must carry on the same business at all the times indicated in the preceding table – that is, throughout the trial year and year of ownership change (if applicable) and other relevant time. The test is not satisfied if at any time the company did not carry on the same business as it did at another required time or it derives assessable income from:
- a business of a kind that it did not carry on before the relevant time, or
- a transaction of a kind that it did not enter into in the course of its business operations before the relevant time.

'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. However, 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, see sections 165-13 and 165-210 of ITAA 1997, Taxation Ruling TR and Draft Taxation Ruling TR 2006/D4.

Other losses – trusts only

Show at **C** those net capital losses that were transferred at consolidation by a trust.

EXAMPLE 7

A consolidated group comes into existence on 1 July 2005. During the 2005–06 income year the following net capital losses are transferred to the head company from joining entities which pass the loss transfer tests indicated.

Joining entity	Joining time	Net capital loss amount $	Transfer test passed	
			Continuity of ownership	Same business
A Company	1.7.2005	900	X	✓
B Company	1.7.2005	1,800	✓	
C Company	9.4.2006	3,200	✓	
X Fixed trust	1.7.2005	2,400		
Y Non-fixed trust	1.7.2005	1,100		

The head company completes part A, item **6** on the schedule as follows:

Continuity of ownership test losses **A** 1,800.00

Same business test losses **B** 900.00

Other losses **C** 3,500.00

As C Company's continuity of ownership net capital losses were transferred after consolidation, the amount transferred is recorded at **D** item **7**.

7 NET CAPITAL LOSSES TRANSFERRED FROM JOINING ENTITIES AFTER CONSOLIDATION

NOTE

- Do not include tax losses, film losses or foreign source losses at item **7**.
- Show tax losses transferred from joining entities after consolidation at item **2**, and foreign source losses at part E, **Foreign source losses** (see page 29).
- Do not include net capital losses transferred at consolidation – include these losses at item **6**.
- Net capital loss has the meaning given by sections 102-10 and 165-114 of ITAA 1997.
- Do not include net capital losses transferred in an earlier income year.

This item requires information on the amount of net capital losses transferred from joining entities to the head company **after** the date the consolidated group has been brought into existence – that is, the date specified in the notice of choice given to the Commissioner. See section 703-50 of ITAA 1997.

The relevant amount of net capital losses transferred during the income year is to be recorded against **D**, **E** or **F**, depending on which loss transfer test, if any, has been satisfied.

When an entity joins a consolidated group it calculates its taxable income or loss for the period up to the time it joins the group. Generally, any unused carry-forward losses are transferred to the head company if the losses could have been used by the joining entity, assuming sufficient income or gains, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a shorter period than 12 months. See subsection 707-120(2) of ITAA 1997.

Whether the losses could have been used by the joining entity in the trial year is determined by applying modified versions of the usual tests for deducting and applying losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of ITAA 1997.

Continuity of ownership test losses – companies only

Show at **D** those net capital losses that were transferred after consolidation because the continuity of ownership and control tests were satisfied from the start of the year when the loss was incurred until immediately after the joining time.

For more information on the continuity of ownership and control tests, see **6 Net capital losses transferred from joining entities (including head company) at consolidation** in part A on page 12.

Same business test losses – companies only

Show at **E** those net capital losses that were transferred after consolidation because the continuity of ownership or control tests were failed but the joining company satisfied the same business test.

For more information on the same business test, see **6 Net capital losses transferred from joining entities (including head company) at consolidation** in part A on page 12.

Other losses – trusts only

Show at **F** those net capital losses that were transferred after consolidation by a trust.

EXAMPLE 8

A consolidated group comes into existence on 1 July 2005. During the 2005–06 income year the following net capital losses are transferred to the head company from joining entities which passed the loss transfer tests indicated.

Joining entity	Joining time	Net capital loss amount $	Transfer test passed	
			Continuity of ownership	Same business
X Company	1.7.2005	2,500	X	✓
Y Company	2.7.2005	300	✓	
Z Company	3.2.2006	4,800	X	✓
A Fixed trust	8.6.2006	250		
B Non-fixed trust	8.6.2006	3,200		

The head company completes part A, item **7** on the schedule as follows:

Continuity of ownership test losses **D** 300 .00

Same business test losses **E** 4800 .00

Other losses **F** 3450 .00

As X Company's same business net capital losses were transferred at consolidation, the amount transferred is recorded at **B** item **6**.

8 NET CAPITAL LOSSES UTILISED

NOTE

- Do not include tax losses, film losses or foreign source losses utilised at item **8**.
- Show tax losses utilised at item **3**, and foreign source losses utilised at part E, **Foreign source losses** (see page 29).
- Net capital loss has the meaning given by sections 102-10 and 165-114 of ITAA 1997.
- You may need to complete a *Capital gains tax (CGT) schedule 2006*. For more information, see the *Guide to capital gains tax 2006* (NAT 4151–6.2006).

This item requires information on the amount of net capital losses utilised. A head company utilises a net capital loss to the extent that it is applied to reduce an amount of the head company's capital gains.

Generally, a head company makes a capital gain or capital loss if certain events – called CGT events – happen. For more information about CGT events, see the *Guide to capital gains tax 2006*. This publication includes:
- a capital gain or loss worksheet for calculating a capital gain or capital loss for each CGT event, and
- a CGT summary worksheet for calculating the company's net capital gain or capital loss.

A head company may be entitled to utilise carry-forward losses broadly comprising:
- losses generated by the consolidated group – group losses – and
- transferred losses that were generated by an entity before it became a member of the group.

Before utilising a group loss or a transferred loss, a head company is required to pass the continuity of ownership and control tests or the same business test.

For more information on the conditions applying to the continuity of ownership test, see **6 Net capital losses transferred from joining entities (including head company) at consolidation** in part A on page 12. For more information on the same business test, see sections 165-13 and 165-210 of ITAA 1997, Taxation Ruling TR 1999/9 and Draft Taxation Ruling TR 2006/D4.

Transferred losses

The operation of the continuity of ownership test is modified by Subdivision 707-B of ITAA 1997. Firstly, the loss year is modified so that it starts from when the loss was transferred to the head company (however, subsection 707-140(2) of ITAA 1997 provides that the head company is not prevented from utilising the loss for the income year in which the transfer occurs). Secondly, in determining whether a head company can use a loss transferred to it after passing the continuity of ownership and control tests, changes in ownership of a loss company before it joined the consolidated group are recognised. See section 707-210 of ITAA 1997.

Net capital losses generated by a consolidated group – group losses – are effectively utilised before transferred net capital losses. See paragraph 707-310(3)(b) of ITAA 1997.

Concessional net capital losses are used after group net capital losses, and are effectively used before other transferred net capital losses. See subsection 707-350(2) of the *Income Tax (Transitional Provisions) Act 1997*.

All losses transferred to a head company, for the first time from the entity that actually made them, constitute a bundle of losses. Losses within the bundle will be categorised by the 'sort of loss' such as a tax loss or net capital loss. See section 707-315 of ITAA 1997.

Available fraction

An available fraction is worked out for each loss bundle. The available fraction limits the annual rate at which the bundle's losses may be recouped by the head company. However, for utilisation purposes, losses in one bundle may be subject to the available fraction for another loss bundle if certain conditions are satisfied (see **Increasing the available fraction – value donor concession** on the next page).

Where losses are transferred for the first time, the available fraction is calculated like this:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

The modified market value of a joining entity is the amount that would be the market value of the entity at the joining time if:

- the entity has no losses and the balance of its franking account is nil
- the subsidiary members of the group at the time are separate entities and not divisions or parts of the head company of the group
- the entity's market value did not include an amount attributable (directly or indirectly) to a membership interest in a member of the group (other than the entity) that is a corporate tax entity or an entity that transferred losses to the head company, and
- a trust (other than a corporate tax entity or a trust with losses) contributes to the joining entity's market value only to the extent attributable to fixed entitlements (at joining time) to income or capital of the trust that is not attributable (directly or indirectly) to membership interests in another member of the group that is a corporate tax entity or a trust with losses.

See section 707-325 of ITAA 1997.

An increase in the value of the loss entity is excluded from the entity's modified market value if the increase results from either of these events:

- an injection of capital into the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee, or
- a non-arm's length transaction that involved the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee.

The rules apply to events that occur in the four years before the loss entity joins the group; however, they do not apply to events that occurred before 9 December 2000. See subsections 707-325(2) and (4) of ITAA 1997, section 707-329 of the *Income Tax (Transitional Provisions) Act 1997* and Taxation Ruling TR 2004/9.

The head company's adjusted market value at the initial transfer time is the amount that would be the market value at that time if:

- the head company did not have a loss of any sort for an income year ending before that time, and
- the balance of the head company's franking account was nil at that time.

See subsection 707-320(1) of ITAA 1997. The value for the head company is worked out on the basis that subsidiary members of the consolidated group are part of the head company.

> **NOTE**
> The Commissioner will have a statutory obligation to ensure compliance with the market valuation requirements of the consolidation regime and to form a view as to whether valuations undertaken are accurate. The publication *Consolidation and market valuation* (NAT 7803) will help you meet your tax obligations.

The available fraction may be increased if the value donor concession applies. The available fraction is adjusted if certain events happen – for example, the consolidated group acquires a new loss entity or the sum of the available fractions in the group exceeds 1. See subsection 707-320(2) of ITAA 1997.

The use of transferred losses is apportioned when their available fraction applied for only part of the income year or when the available fraction changes during the income year. See section 707-335 of ITAA 1997.

Apply the available fraction using a three-step process as follows:

1 Work out the amount of each category of the group's income or gains as specified in column 2 of the table in subsection 707-310(3) of ITAA 1997. This is the group's total income or gains for each category less relevant deductions including group losses and concessional losses (but not transferred losses whose use is limited by their available fraction).
2 Multiply each category amount by the bundle's available fraction. The result is taken to be the head company's only income or gains for that category.
3 On the basis of the step 2 assumption, work out a notional taxable income for each loss bundle.

This process enables the head company to determine the amount of transferred losses of each sort it can use from the loss bundle to determine its actual taxable income.

> **NOTE**
> An example applying the available fraction using the three-step process is on page 22.

Increasing the available fraction – value donor concession

A loss entity (the 'real loss-maker'), in calculating its available fraction, may add to its modified market value the modified market value of another company (the 'value donor'). Certain losses from the value donor are also able to be notionally transferred to the real loss-maker. This enables those losses to be utilised using the available fraction for the real loss-maker. Only company losses may benefit from the concession to donate value and losses.

The conditions for adding an amount of modified market value from the value donor to the real loss-maker are as follows:

- Both the real loss-maker and the value donor join the group when it first consolidates before 1 July 2004.
- The real loss-maker has a 'test loss' – a tax loss or net capital loss that is not a concessional loss.
- The real loss-maker could have transferred its test loss to the value donor under Subdivision 170-A or 170-B of ITAA 1997 (assuming those Subdivisions had not been amended to provide only for transfers involving an Australian branch of a foreign bank) for an income year – generally the trial year.
- The value donor – assuming it had made the test loss – could have transferred it to the head company under Subdivision 707-A.
- The head company chooses to increase the real loss-maker's modified market value by a portion of the value donor's modified market value.

See subsections 707-325(1) and (2) of the *Income Tax (Transitional Provisions) Act 1997*.

The increase in the modified market value of the real loss-maker is worked out using a formula. See subsections 707-325(3) and (4) of the *Income Tax (Transitional Provisions) Act 1997*.

The conditions for donating losses from the value donor (referred to here as the 'loss donor') to the real loss-maker are as follows:

- The loss donor has also donated an amount of modified market value to the real loss-maker (in certain circumstances the amount can be nil).
- The loss to be donated is a tax loss or a net capital loss that is not a concessional loss.
- The loss was transferred under Subdivision 707-A from the loss donor to the head company at the time when the consolidated group came into existence.
- The loss donor could have transferred the loss to the real loss-maker, and any other value donor to the real loss-maker, under Subdivision 170-A or 170-B of ITAA 1997 (assuming those Subdivisions had not been amended to provide only for transfers involving an Australian branch of a foreign bank) for an income year – generally the trial year.
- The real loss-maker – and any other value donor of the real loss-maker – could have transferred the loss to the head company under Subdivision 707-A.
- The head company chooses that the loss be included in the real loss-maker's bundle.

See subsections 707-327(1), (2) and (3) of the *Income Tax (Transitional Provisions) Act 1997*.

Where a loss is donated, the group's use of the loss is governed by the real loss-maker's available fraction.

A loss can only be taken into account under either the value donor rule or the loss donor rule but not both. See subsection 707-327(6) of the *Income Tax (Transitional Provisions) Act 1997*.

A choice to donate losses must be made by the head company by the later of either:

- the day it lodges its income tax return for the first income year for which it uses transferred losses by the available fraction method, or
- 31 December 2005.

When applying Subdivisions 170-A or 170-B for the purposes of the value donor and loss donor rules, the income year is modified and certain conditions apply. See section 707-328 of the *Income Tax (Transitional Provisions) Act 1997*.

> **NOTE**
> An example applying the value donor and loss donor concessions is on page 23.

Group

Show at **G** the amount of group net capital losses utilised. Group net capital losses are those net capital losses that have been generated by the consolidated group. Group net capital losses are effectively utilised before transferred net capital losses.

Show transferred net capital losses utilised at either **H** or **I** as appropriate.

Concessional

A transferred net capital loss, in a particular loss bundle, may be used in accordance with the concessional method if the loss meets certain conditions and the head company has chosen to use the concessional method for all losses in the bundle that meet these conditions. The conditions are that the net capital loss:

- was originally made outside the consolidated group by a company – the real loss-maker – for an income year ending on or before 21 September 1999
- was transferred from the real loss-maker to the head company of the group when the group first consolidated before 1 July 2004
- was transferred because the continuity of ownership and control tests were passed, and
- had not been previously transferred to a group.

See subsection 707-350(1) of the *Income Tax (Transitional Provisions) Act 1997*.

Concessional losses may be utilised by the head company over three years, subject to the general loss recoupment tests as modified. See subsection 707-350(3) of the *Income Tax (Transitional Provisions) Act 1997.* This limit on utilisation replaces that which would otherwise apply under the available fraction method.

Net capital losses utilised on a concessional basis are effectively utilised before other transferred net capital losses. Group net capital losses must be utilised before concessional net capital losses.

Show at **H** the amount of concessional net capital losses utilised.

Other transferred

Show at **I** the amount of other transferred net capital losses utilised. Other transferred net capital losses are net capital losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Transferred net capital losses utilised on a concessional basis are to be shown at **H**.

Total

Show at **J** the total of net capital losses utilised at **G** to **I**.

EXAMPLE 9

CCC consolidated group comes into existence on 1 July 2003. On that date, net capital losses of $1,200 are transferred to the head company from joining entities which satisfy the continuity of ownership and control transfer tests. No other losses are transferred to the head company. CCC group determines that $900 of the net capital losses transferred satisfy the conditions for use of the concessional method and the head company makes a choice to apply this method for all the eligible losses. The balance of the losses transferred ($300) is to be utilised applying the available fraction method.

Up to the 2004–05 income year, CCC group utilised net capital losses transferred of $600 – two-thirds of the total amount transferred – applying the concessional method in the first two income years ending after the initial transfer time. Net capital losses of $300 applying the concessional method were carried forward to the 2005–06 income year. Net capital losses of $150 applying the available fraction method were carried forward to the 2005–06 income year.

For the 2005–06 income year, CCC group has capital gains of $2,100 and no capital losses. The head company satisfies the relevant loss recoupment tests in respect of all the transferred net capital losses. CCC group has calculated that it is able to use $50 of the transferred net capital losses applying the available fraction method.

For the 2005–06 income year, CCC group determines its net capital gain as follows:

Capital gains	$	Losses applied	$
Capital gains	2,100	Concessional net capital losses	300
		Transferred net capital losses	50
Total	2,100	Total	350

CCC group's net capital gain is $1,750 (that is, $2,100 – $350).

- Net capital losses transferred of $300 – the total amount transferred ($900) less amount of concessional losses utilised up to 2004–05 ($600) – can be utilised applying the concessional method in the third income year ending after the initial transfer time.
- There are no net capital losses applying the concessional method to be carried forward to the 2006–07 income year. Net capital losses of $100 ($150 – $50) applying the available fraction method can be carried forward to the 2006–07 income year.

For the 2005–06 income year, the head company completes part A, item **8** on the schedule as follows:

Group	**G**	.00
Concessional	**H**	300.00
Other transferred	**I**	50.00
Total	**J**	350.00

9 TRANSFERRED NET CAPITAL LOSSES UTILISED

NOTE

- Do not include transferred net capital losses utilised in accordance with the concessional method (which effectively allows the head company to utilise net capital losses over three years where certain conditions are met).
- Do not include group net capital losses – losses generated by a consolidated group – utilised at item **9**.
- Do not include transferred tax losses, foreign source losses or film losses utilised at item **9**.
- Show transferred tax losses utilised at item **4**, and foreign source losses at part E, **Foreign source losses** (see page 29).
- Net capital loss has the meaning given by sections 102-10 and 165-114 of ITAA 1997.
- If donated net capital losses have been utilised, see the note **Donated net capital losses** on page 19.

This item requires information on the amount of transferred net capital losses utilised. A head company utilises a net capital loss to the extent that it is applied to reduce an amount of the head company's capital gains.

Show at **A**, **D**, **G**, **J**, **M** and **P**, as required, the TFNs of those joining entities that had net capital losses from their loss bundles utilised applying the available fraction method. A bundle of losses consists of all the losses of a joining entity that are transferred to the head company at the same time.

If net capital losses have been utilised in respect of six or fewer loss bundles, complete the number of labels required. If net capital losses have been utilised in respect of more than six loss bundles, show the joining entity TFNs for those loss bundles that had the six largest amounts of net capital losses utilised.

Show at B, E, H, K, N and Q, as required, the corresponding available fractions calculated for the loss bundles for joining entities whose TFNs are recorded at A, D, G, J, M and P, respectively. However, if net capital losses in a loss bundle are utilised with different available fractions (because losses have been 'donated' to other loss bundles), each of the amounts utilised is to be considered separately (see the note **Donated net capital losses** in the next column).

Complete each available fraction to three decimal places (for example, 0.475, 0.520, 0.700).

Where losses are transferred for the first time, the available fraction is calculated like this:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

For details of how the modified market value of the joining loss entity and adjusted market value of the head company are determined, see **8 Net capital losses utilised** in part A on page 15.

Calculate available fractions and then adjust them to three decimal places. Round up the third decimal place if the fourth decimal place is 5 or more. Where an available fraction has been adjusted as a result of certain events – for example, a new member joined the group and transferred a loss bundle – show the adjusted available fraction applicable at the end of the year of income.

An available fraction cannot be a negative amount or greater than one. If the sum of the group's available fractions would total more than one, each available fraction is proportionally reduced. See subsection 707-320(2) of ITAA 1997.

The available fraction for a bundle is adjusted or maintained when one of five adjustment events listed in the table in section 707-320(2) of ITAA 1997 occurs.

For more information regarding the calculation of the available fraction, see **8 Net capital losses utilised** in part A on page 15.

Where the available fraction of a loss bundle has been increased as a result of one company – the value donor – donating value to a loss company, show the increased available fraction.

For more information on the value donor concession, see **8 Net capital losses utilised** in part A on page 15.

Show at C, F, I, L, O and R, as required, the corresponding amount of transferred net capital losses utilised from loss bundles of joining entities whose TFNs are recorded at A, D, G, J, M and P respectively.

If net capital losses have been utilised from more than six loss bundles, show the six largest amounts utilised.

DONATED NET CAPITAL LOSSES

- If one company – the value/loss donor – has donated some of its net capital losses to another loss company – the real loss-maker – so that they can be used by the group in accordance with the real loss-maker's available fraction, do not include the amount of donated net capital losses in the amounts shown for real loss-makers at any of C, F, I, L, O and R as required.
- Show donated net capital losses utilised with the TFN of the value/loss donor company, not the real loss-maker. The available fraction recorded for the value/loss donor in respect of net capital losses donated is the available fraction of the real loss-maker company, not the value/loss donor's available fraction.
- If a value/loss donor company has both donated net capital losses utilised and non-transferable net capital losses utilised, multiple entries are required for the value/loss donor company. Show the donated net capital losses utilised with the available fraction of the real loss-maker. Show the non-transferable net capital losses utilised with the available fraction of the value/loss donor.

For more information about donating losses, see **Increasing the available fraction – value donor concession** on page 17.

EXAMPLE 10

A wholly owned group consists of a head company, H Co, and two subsidiary companies – X Co and Y Co. The group consolidates on 1 July 2003.

Net capital losses were transferred from X Co and Y Co to H Co at the time the group formed on 1 July 2003.

It was determined that the conditions for the value donor concession were satisfied. Modified market value has been donated to X Co from both H Co and Y Co. The available fractions that were worked out, after applying the value donor concession, are:

X	Y
0.900	0.100

Details of subsidiary losses carried forward and companies to which they could have been transferred (assuming Subdivisions 170-A and 170-B of ITAA 1997 have not been amended to provide only for transfers involving an Australian branch of a foreign bank) are as follows:

Co	Transferor TFN	Tax loss carried forward to 2004–05	Transferable to:		
			H Co	X Co	Y Co
X Co	222 222 222	1,200	✓		✓
Y Co	333 333 333	500	✓	✓	
		300	X	X	

It was also determined that Y Co satisfied the loss donor conditions and its transferable net capital loss was donated to X Co to be used in accordance with X Co's increased available fraction. $500 of this loss was carried forward to the 2005–06 income year.

For the 2005–06 income year, the consolidated group has capital gains of $2,000. The available fraction amount for each bundle is as follows:

Loss bundle	Income amount $	Multiplied by available fraction	Available fraction amount for bundle ($)
X Co	2,000	0.900	1,800
Y Co	2,000	0.100	200

The consolidated group can therefore utilise all of the net capital losses in X Co's bundle ($1,200) and can also utilise all of Y Co's transferable net capital loss ($500) because it is used in accordance with X Co's increased available fraction. Y Co's non-transferable net capital loss ($300) can only be utilised to the extent of $200.

The head company completes part A, item **9** on the schedule as follows:

	Transferor TFN		Available fraction		
A	222222222	**B**	0·900	**C**	1,200.00
D	333333333	**E**	0·900	**F**	500.00
G	333333333	**H**	0·100	**I**	200.00
J		**K**	·	**L**	.00
M		**N**	·	**O**	.00
P		**Q**	·	**R**	.00

EXAMPLE 11

A consolidated group determines the following amounts of net capital losses utilised from eight loss bundles for the 2005–06 income year:

Co	Transferor TFN	Available fraction	Tax losses utilised $
A	111 111 111	0.129	2,390
B	222 222 222	0.011	33
C	333 333 333	0.324	3,950
D	444 444 444	0.175	4,655
E	555 555 555	0.000	1,920
F	666 666 666	0.157	3,515
G	777 777 777	0.083	1,250
H	888 888 888	0.108	4,975

C Co and E Co have satisfied the value donor and loss donor conditions. E Co has donated its entire modified market value to C Co and also donated transferable losses to C Co, the real loss-maker. C Co's increased available fraction is 0.324 and E Co's reduced available fraction is 0.000.

The head company completes part A, item **9** on the schedule as follows:

	Transferor TFN		Available fraction		
A	111111111	**B**	0·129	**C**	2,390.00
D	333333333	**E**	0·324	**F**	3,950.00
G	444444444	**H**	0·175	**I**	4,655.00
J	555555555	**K**	0·324	**L**	1,920.00
M	666666666	**N**	0·157	**O**	3,515.00
P	888888888	**Q**	0·108	**R**	4,975.00

Information has been recorded for the loss bundles that had the six largest amounts of net capital losses utilised.

E Co's donated net capital losses are shown against **its** TFN, not the TFN of the real loss-maker, C Co. The available fraction recorded for the value/loss donor, E Co, in respect of net capital losses donated is the increased available fraction of the real loss-maker company, C Co, **not** E Co's reduced available fraction of nil.

10 NET CAPITAL LOSSES CARRIED FORWARD TO LATER INCOME YEARS

NOTE

- Do not include tax losses, film losses or foreign source losses carried forward to later income years at item **10**.
- Show tax losses carried forward to later income years at item **5**, and foreign source losses at part E, **Foreign source losses** (see page 29).
- Net capital loss has the meaning given by sections 102-10 and 165-114 of ITAA 1997.
- The head company must keep a record of its net capital losses and account for any adjustments including those made by the Tax Office. These records must be retained for five years after a CGT event has occurred or the losses recouped, whichever is the later.
- If required, the head company must be able to demonstrate not only the balance of any net capital losses being utilised or carried forward, but also how those net capital losses arose.

Group

Show at **S** the amount of group net capital losses carried forward to later income years under section 102-15 of ITAA 1997. Group net capital losses are those net capital losses that have been generated by the consolidated group.

Show transferred net capital losses carried forward to later income years at either **T** or **U** as appropriate.

Concessional

Show at **T** the amount of concessional net capital losses carried forward to later income years under section 102-15 of ITAA 1997. Concessional net capital losses are net capital losses that meet certain conditions and may be utilised by the head company over three years, subject to the general loss recoupment tests as modified.

For more information, see **8 Net capital losses utilised** in part A on page 15.

If the head company wishes to use the concessional method it must choose to do so by the later of either:

- the day it lodges its income tax return for the income year in which it could first use any of its transferred losses, or
- 31 December 2005.

The choice, if made, must be for all eligible losses in a particular bundle.

Where a head company has not made a choice whether to use the concessional method in respect of transferred losses meeting the relevant conditions, show the amount of these losses carried forward to later income years at **U**.

Other transferred

Show at **U** the amount of other transferred net capital losses carried forward to later income years under section 102-15 of ITAA 1997. Other transferred net capital losses are net capital losses that have been made outside the consolidated group and transferred into the group from an entity when it joined the group. Where a choice has been made to use the concessional method in respect of eligible transferred losses, show the amount of these losses at **T**.

Total

Show at **V** the total of net capital losses carried forward to later income years at **S** to **U**.

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

EXAMPLE 12

XYZ consolidated group comes into existence on 1 July 2003. On that date, net capital losses of $2,100 are transferred to the head company from joining entities which satisfy the continuity of ownership and control transfer tests. No other losses are transferred to the head company. XYZ group determines that $1,200 of the net capital losses transferred satisfy the conditions for use of the concessional method and the head company makes a choice to apply this method for all the eligible losses. The balance of the losses transferred ($900) is to be utilised applying the available fraction method.

Up to the 2004–05 income year, the head company of the XYZ group utilised $800 of the transferred net capital losses using the concessional method and $700 of the transferred tax losses applying the available fraction method.

For the 2005–06 income year, the head company of the XYZ group makes a group loss of $500 and is not able to utilise any of the transferred net capital losses.

The head company completes part A, item **10** on the schedule as follows:

Group	S	500.00
Concessional	T	400.00
Other transferred	U	200.00
Total	V	1,100.00

11 IF YOU COMPLETED ITEM 4 OR ITEM 9 IN PART A, WERE THE APPORTIONMENT RULES APPLIED?

If transferred tax losses or transferred net capital losses have been utilised from any loss bundle applying the available fraction method, you must complete this item.

The use of transferred losses is apportioned if their available fraction applied for only part of the income year or when the available fraction changes during the income year. Apportionment applies if:

- losses in a bundle are transferred to the head company by a subsidiary member that is joining part way through the head company's income year, or
- available fractions are adjusted during the income year. Adjustments to available fractions are required if additional loss bundles are transferred to the head company at a later time or because there has been a capital injection or a non-arm's length transaction. See subsection 707-320(2) of ITAA 1997. In these cases, available fractions will have different numerical values for different periods of the income year.

Apportionment in the first case ensures that a subsidiary's losses are only offset against income generated by the group after the subsidiary becomes a member.

Apportionment in the second case ensures that an adjusted available fraction that is less than the previous fraction only applies from the date of the event that triggered the adjustment.

Note that if a consolidated group is formed part way through the head company's income year, the head company's use of its own prior year losses (transferred to itself under Subdivision 707-A on consolidation) will be unrestricted in respect of income broadly attributable to the pre-consolidation period. This is achieved by treating the losses actually incurred by the head company, which are subsequently transferred to itself at consolidation, as being in a bundle with an available fraction of one for the part of the head company's income year which is prior to the formation of the consolidated group.

See section 707-335 of ITAA 1997.

Print **X** in the appropriate box at **W**.

EXAMPLE 13

Applying the available fraction using the three-step process

XYZ consolidated group is working out the group's taxable income for the 2005–06 income year.

For the income year, the group has capital gains of $900 and capital losses of $200.

The group's only other assessable income is $9,000. Deductions relating to that income are $990. The group has a tax loss carried forward from the previous income year of $60.

The group's remaining transferred losses at that time, and their available fractions, are set out in the table below.

The continuity of ownership and control tests or same business tests are passed in respect of the recoupment of all these losses.

Loss bundle	Available fraction	Unused transferred losses
Bundle 1	0.146	$50 net capital losses $3,000 tax losses (not film)
Bundle 2	0.214	$100 net capital losses $5,000 tax losses (not film)

Step 1: Work out the categories of group income or gains.

Income or gains	Amount excluding group losses $	Less: Other allowable deductions and reductions ($)	Less: Group and concessional losses of that sort ($)	Column 5 Income and gains available for the bundle H Co $
Capital gains	900	200	0	700
Other assessable income	9,000	990	60	7,950

Step 2: Calculate the fraction of the income and gain that is attributable to each bundle.

Column 1 Income or gains	Loss bundle	Column 5 amount $	Multiplied by available fraction	Available fraction amount for bundle $
Capital gains	Bundle 1	700	0.146	102
	Bundle 2	700	0.214	150
Other assessable income	Bundle 1	7,950	0.146	1,161
	Bundle 2	7,950	0.214	1,701

Step 3(a): Work out a notional taxable income for bundle 1.

As a result of step 2, it is assumed that XYZ group's only capital gain is $102. On the basis of that assumption, the whole of the $50 net capital loss from bundle 1 can be used. This results in a (notional) net capital gain for bundle 1 of $52 ($102 – $50).

Notional taxable income for bundle 1:

Assessable income	$	Deductions	$
Net capital gain	52	Tax losses (bundle 1)	1,213
Other assessable income	1,161		
Total	1,213	Total	1,213

Therefore, XYZ group is able to use $1,213 of its tax losses from bundle 1.

Step 3(b): Work out a notional taxable income for bundle 2.

As a result of step 2, it is assumed that XYZ group's only capital gain is $150. On the basis of that assumption, the whole of the $100 net capital loss from bundle 2 can be used. This results in a (notional) net capital gain for bundle 2 of $50 ($150 – $100).

Notional taxable income for bundle 2:

Assessable income	$	Deductions	$
Net capital gain	50	Tax losses (bundle 2)	1,751
Other assessable income	1,701		
Total	1,751	Total	1,751

Therefore, XYZ group is able to use $1,751 of its tax losses from bundle 2.

Determine XYZ group's actual taxable income or gain.

First, work out XYZ group's net capital gain.

Capital gains	$	Capital losses	$
Capital gain	900	Group capital losses	200
		Net capital losses:	
		(bundle 1)	50
		(bundle 2)	100
Total	900	Total	350

XYZ group's net capital gain is $550 ($900 – $350).

Assessable income	$	Deductions	$
Net capital gain	550	Deductions	990
Other assessable income	9,000	Group loss	60
		Tax losses:	
		(bundle 1)	1,213
		(bundle 2)	1,751
Total	9,550	Total	4,014

XYZ group's taxable income is $5,536 ($9,550 – $4,014).

EXAMPLE 14

Value donor and loss donor rules

A wholly owned group consists of a head company, H Co and three subsidiary companies – A Co, B Co and C Co.

B Co is a subsidiary of A Co but is not a subsidiary of C Co. The group consolidates on 1 July 2003. On that date, the adjusted market value of the group is $10,000. No transferred losses were utilised by H Co up to the 2004–05 income year.

Details of modified market value, subsidiary losses and companies to which they could be transferred (assuming Subdivisions 170-A and 170-B of ITAA 1997 had not been amended to provide only for transfers involving an Australian branch of a foreign bank), at the time the group formed, are as follows:

Co	Modified market value	Tax loss		Net capital loss		Transferable to			
	$	Year	$	Year	$	H Co	A Co	B Co	C Co
H	4,000								
A	3,000	2002	400			✓		✓	✓
B	500			2000	200	X	✓		X
C	2,500	2001	80			X	X	X	
		2002	100			✓	✓	✓	

In the absence of the value donor concession, the group's available fractions would be:

A	B	C	Total
0.300	0.050	0.250	0.600

A Co and C Co each have a loss that is transferable to all other group members. B Co has a loss that is only transferable to A Co.

While there are various options for donating modified market value and losses, it is assumed, in this example, that modified market value and losses are to be donated to A Co. H Co is required to make these choices by the later of either:

- the day on which it lodges its income tax return for the first income year in which it utilises, applying the available fraction method, losses that were transferred to it under Subdivision 707-A of ITAA 1997, or
- 31 December 2005.

See subsections 707-325(5) and 707-327(5) of the *Income Tax (Transitional Provisions) Act 1997*.

Donating modified market value and losses to A Co

- H Co: modified market value can be added to A Co's modified market value.
- C Co: modified market value can also be added to A Co's modified market value. Assume only 60% of C Co's value is added. Note that some value is to remain with C Co which has a non-transferable loss. C Co's 2002 loss is moved to A Co's bundle.
- B Co: could move modified market value to A Co, but cannot donate its loss to A Co because B Co's loss is not transferable to C Co – one of A Co's other value donors. Therefore, it is determined that B Co will retain its modified market value and loss.

A Co receives 100% of H Co's modified market value and 60% of C Co's modified market value. A Co's available fraction is worked out as:

[$3,000 + $4,000 + (60% x $2,500)] ÷ $10,000 = 0.850

C Co's available fraction is worked out as:

($2,500 – $1,500) ÷ $10,000 = 0.100

B Co's available fraction is 0.050.

Therefore, the group's available fractions and the losses to which they apply are:

Co	Available fraction	Tax loss		Net capital loss		Comments
		Year	$	Year	$	
A	0.850	2002	400			
		2002	100			From C Co's bundle
B	0.050			2000	200	
C	0.100	2001	80			

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PART B CANCELLATION OF TRANSFER OF LOSSES

1 HAS THE HEAD COMPANY CANCELLED THE TRANSFER OF A LOSS?

A head company can make a choice to cancel the transfer of a loss of a joining entity. If the choice is made, the loss cannot be used by any entity for an income year ending after the joining time. See sections 707-145 and 707-150 of ITAA 1997.

Print **X** in the appropriate box at **A**.

If the answer is yes, complete item **2**.

If the answer is no, print **N**. Do not complete item **2**. Go to part C, **Ownership test and same business test**.

2 DETAILS OF CANCELLATION OF TRANSFER OF LOSSES

Show at **B**, **D**, **F** and **H** the TFNs of those joining entities where there has been a cancellation of the transfer of one or more losses during the income year. If the cancellation of the transfer of a loss has occurred in respect of four or fewer joining entities, complete the number of labels required. If the cancellation of the transfer of a loss has occurred in respect of more than four joining entities, show the TFNs for those joining entities for which there was the cancellation of the transfer of the four largest total amount of losses.

Show at **C**, **E**, **G** and **I**, as required, the total amount of the cancellation of the transfer of one or more losses for joining entities whose TFNs are recorded at **B**, **D**, **F** and **H** respectively.

EXAMPLE 15

A consolidated group comes into existence on 1 July 2005. For the 2005–06 income year, the head company cancelled the transfer of one or more losses of six joining entities as follows:

TFN	Amount of cancellation of transfer of loss ($)				Total
	Tax	Film	Net capital	Foreign	
111 111 111	100	180			280
222 222 222			230		230
333 333 333				250	250
444 444 444	80		220		300
555 555 555			110		110
666 666 666	320				320

The head company completes part B, item **2** on the schedule as follows:

Joining entity TFN

B	111111111	**C**	,280.00
D	333333333	**E**	,250.00
F	444444444	**G**	,300.00
H	666666666	**I**	,320.00

TFNs and corresponding amounts have been recorded for those joining entities for which there was the cancellation of the transfer of the four largest total amount of losses.

PART C OWNERSHIP TEST AND SAME BUSINESS TEST

1 FOR EACH JOINING COMPANY THAT TRANSFERRED A SAME BUSINESS TEST TAX LOSS OR SAME BUSINESS TEST NET CAPITAL LOSS TO THE HEAD COMPANY, DETERMINE THE YEAR OF INCOME IN WHICH THE JOINING COMPANY FIRST FAILED THE CONTINUITY OF OWNERSHIP OR CONTROL TESTS.

> **!** NOTE
> - Do not include transferred film losses or foreign source losses at item **1**.
> - Do not include losses transferred by a joining company which satisfied the continuity of ownership and control transfer tests at item **1**.
> - Do not include losses transferred by a joining trust at item **1**.

The aim of item **1** is to find out (in respect of companies which transferred losses to a head company of a consolidated group because a same business transfer test was satisfied):
- the period of time between the year of failure of the continuity of ownership or control transfer tests and the trial year, and
- the losses that failed the continuity of ownership or control tests at the joining time and in the trial year.

When a company joins a consolidated group any unused carry forward losses are transferred to the head company if the losses could have been used by the joining entity, assuming sufficient income or gains in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a shorter period than 12 months. See subsection 707-120(2) of ITAA 1997.

Whether the losses could have been used by the joining company in the trial year is determined by applying modified versions of the usual tests for deducting and applying losses. A joining company with a carry forward tax loss or net capital loss will need to satisfy a same business test unless the company satisfies the following continuity of ownership test conditions (and the control test):
- 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, and 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. See sections 165-150 to 165-160 of ITAA 1997.
- It is reasonable to assume that there are persons (none of them companies or trustees) 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. See 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. See section 165-165 and subsection 165-12(7) of ITAA 1997.
- A modified version of the above rules can apply to widely held companies and eligible Division 166 companies. See Division 166 of ITAA 1997.

Anti-avoidance provisions are at Subdivisions 175-A and 175-B of ITAA 1997.

Same business test losses – companies only

The following table shows how the same business test applies for companies joining a consolidated group.

See subsections 707-120(1) and (3) and subsections 707-125(1) to (3) of ITAA 1997.

Same business transfer tests for companies

In these circumstances:	Test the joining entity's business at these points:
1. The joining entity made the loss for an income year starting after 30 June 1999.	■ just before the end of the income year in which the loss was made ■ the year of ownership change if that year started before the trial year, and ■ the trial year. **Note**: Companies whose total income for an income year is more than $100 million cannot satisfy the same business test for the same business test period.
2. The joining entity made the loss for an income year starting before 1 July 1999.	■ just before the ownership or control tests were first failed or, if the company is unable to point to the actual time the ownership test was failed, just before the relevant default test time shown within the table to section 165-13 of the ITAA 1997, and ■ the trial year. **Note**: Companies whose total income for an income year is more than $100 million cannot satisfy the same business test throughout the trial year (even if the company carries on the same business).

The year of ownership change is the income year in which the joining entity first fails the ownership or control tests or, where the company is unable to point to the actual time the ownership test was failed, the income year that included the relevant default test time shown within the table to section 165-13 of ITAA 1997.

Where a loss is transferred as a result of satisfying the same business test, it may only be transferred again if – in addition to satisfying the usual transfer tests – the entity transferring the loss carried on the same business at these times:

- just before the end of the income year in which the loss was previously transferred to it, and
- during the trial year.

See subsection 707-135(2) of ITAA 1997.

Under the same business test the company must carry on the same business at all the times indicated in the preceding table – that is, throughout the trial year and year of ownership change (if applicable) and other relevant time. The test is not satisfied if at any time the company did not carry on the same business as it did at another required time or it derives assessable income from:

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

'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. However, 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, see sections 165-13 and 165 210 of ITAA 1997, Taxation Ruling TR 1999/9 and Draft Taxation Ruling TR 2006 D/4.

Year ownership test failed 2005–06

Show at **J** the total amount of tax losses and net capital losses of joining companies which first failed the continuity of ownership or control tests in the 2005–06 income year but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2004–05

Show at **K** the total amount of tax losses and net capital losses of joining companies which first failed the continuity of ownership or control tests in the 2004–05 income year but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2003–04

Show at **L** the total amount of tax losses and net capital losses of joining companies which first failed the continuity of ownership or control tests in the 2003–04 income year but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2002–03

Show at **M** the total amount of tax losses and net capital losses of joining companies which first failed the continuity of ownership or control tests in the 2002–03 income year but satisfied the same business test. If there is no amount, leave blank.

Year ownership test failed 2001–02 and earlier income years

Show at **N** the total amount of tax losses and net capital losses of joining companies which first failed the continuity of ownership or control tests in the 2001–02 and earlier income years but satisfied the same business test. If there is no amount, leave blank.

EXAMPLE 16

A consolidated group comes into existence on 1 July 2005. During the 2005–06 income year the following joining companies transfer tax losses and net capital losses because they satisfy the same business transfer test:

Joining company	Loss year	Amount $	Sort of loss	Year of ownership change
A	1995–96	1,000	Tax	1996–97
				2003–04
	2002–03	50	Net capital	2004–05
B	2000–01	350	Tax	2005–06
	2002–03	400	Net capital	2005–06
C	2000–01	550	Net capital	2002–03

For the 2005–06 income year, the head company completes part C, item **1** on the schedule as follows:

Year ownership test failed

2005–06	**J**	750.00
2004–05	**K**	50.00
2003–04	**L**	.00
2002–03	**M**	550.00
2001–02 and earlier income years	**N**	1,000.00

The amount of the tax loss incurred by company A ($1,000) is recorded at **N** because the first change of ownership occurred during the 1996–97 income year.

2 AMOUNT OF LOSSES UTILISED AFTER CONSOLIDATION, FOR WHICH THE CONTINUITY OF OWNERSHIP TEST IS NOT PASSED BUT THE SAME BUSINESS TEST IS SATISFIED

NOTE

- Do not include film losses or foreign source losses utilised at item **2**.
- Do not include at item **2** losses utilised for which the head company satisfied the continuity of ownership test.

Show at item **2** the amount of tax losses and net capital losses utilised by the head company after consolidation where the continuity of ownership test was not passed after consolidation but the same business test was satisfied.

Before a head company can utilise a loss generated by the consolidated group, or a loss transferred from a joining entity, it must satisfy the continuity of ownership and control tests or the same business test. Subdivision 707-B of ITAA 1997 modifies the recoupment tests for transferred losses. The loss year is modified so that it starts from when the loss was transferred to the head company. Accordingly, losses transferred to a head company of a consolidated group because they satisfied the same business transfer test are effectively refreshed in the hands of the head company, in that the ownership test period for these losses commences at the time they are transferred to the head company.

However, in determining whether a head company can use a loss transferred to it from a joining company which passed the continuity of ownership and control tests, the changes in ownership of the joining company before it joined the consolidated group are taken into account. In addition, it is assumed that the head company's interest in the joining company remains unchanged from the joining time. This means that, in determining if a head company can utilise a loss transferred to it from a joining company, the head company will satisfy the continuity of ownership test if the joining company would have satisfied the continuity of ownership test in respect of the loss.

For more information on the same business test, see sections 165-13 and 165-210 of ITAA 1997, Taxation Ruling TR 1999/9 and draft taxation ruling TR 2006/D4.

For information on the continuity of ownership test and the same business test for a multiple entry consolidated (MEC) group, see Subdivision 719-F of ITAA 1997 and the *Consolidation reference manual* (NAT 6835).

Tax losses

Show at **O** the amount of tax losses utilised by the head company which did not satisfy the continuity of ownership and control tests but did satisfy the same business test.

Net capital losses

Show at **P** the amount of net capital losses utilised by the head company which did not satisfy the continuity of ownership and control tests but did satisfy the same business test.

EXAMPLE 17

A consolidated group comes into existence on 1 July 2005. On that date, the following losses are transferred to the head company from a joining company which satisfied the continuity of ownership and control transfer tests.

Year loss incurred	Sort of loss	Amount $
2000–01	Tax	1,200
2001–02	Net capital	4,600

During the period from the start of the loss year (1 July 2000) until immediately after the joining time (1 July 2005) there was a 40% change in the persons who controlled the voting power of the head company and had the rights to the company's dividends and capital distributions. The joining company was a 100% subsidiary of the head company during this period.

For the 2005–06 income year the consolidated group generates sufficient capital gains and other assessable income to enable the transferred tax and net capital losses to be fully utilised applying the available fraction method. On 1 August 2005 there is a 20% change in the persons who, at the start of the loss year, controlled the voting power of the head company and had the rights to the company's dividends and capital distributions. The head company does not satisfy the continuity of ownership test because of the change of majority ownership on 1 August 2005 – that is, combined ownership changes of 60% (40% + 20%). However, the head company satisfies the same business test because the consolidated group carried on the same business during the 2005–06 income year as it did immediately before the change of ownership.

In determining whether a head company can use a loss transferred to it from a joining company which passed the continuity of ownership and control tests, changes in ownership of the joining company before it joined the consolidated group are taken into account.

The head company completes part C, item **2** on the schedule as follows:

Tax losses **O** 1,200.~~00~~

Net capital losses **P** 4,600.~~00~~

3 AMOUNT OF LOSSES CARRIED FORWARD TO LATER INCOME YEARS FOR WHICH THE SAME BUSINESS TEST MUST BE SATISFIED BEFORE THEY CAN BE UTILISED

NOTE

- Do not include film losses or foreign source losses utilised at item **3**.
- Do not include at item **3** losses carried forward to later income years for which the head company satisfies the continuity of ownership test.

Show at item **3** the amount of tax losses, excluding film losses, and net capital losses carried forward to later income years for which the head company must satisfy the same business test to utilise these losses.

Before a head company can utilise a loss generated by the consolidated group, or a loss transferred from a joining entity, it must satisfy the continuity of ownership and control tests or the same business test. Subdivision 707-B of ITAA 1997 modifies the recoupment tests for transferred losses. The loss year is modified so that it starts from when the loss was transferred to the head company. Accordingly, losses transferred to a head company of a consolidated group because they satisfied the same business transfer test are effectively refreshed in the hands of the head company, in that the ownership period for these losses starts at the time they are transferred to the head company.

However, in determining whether a head company can use a loss transferred to it from a joining company which passed the continuity of ownership and control tests, changes in ownership of the joining company before it joined the consolidated group are taken into account. In addition, it is assumed that the head company's interest in the joining company remains unchanged from the joining time. This means that, in determining if a head company can utilise a loss transferred to it from a joining company, the head company will satisfy the continuity of ownership test if the joining company would have satisfied the continuity of ownership test in respect of the loss.

For more information on the same business test, see sections 165-13 and 165-210 of ITAA 1997, Taxation Ruling TR 1999/9 and Draft Taxation Ruling TR 2006 D/4.

Tax losses

Show at **Q** the amount of tax losses carried forward to later income years for which the head company must satisfy the same business test to utilise these losses.

Net capital losses

Show at **R** the amount of net capital losses carried forward to later income years for which the head company must satisfy the same business test to utilise these losses.

EXAMPLE 18

A consolidated group comes into existence on 1 July 2005. On that date, tax losses of $2,200 are transferred to the head company from a joining company which satisfies the continuity of ownership and control transfer tests.

For the 2005–06 income year, the consolidated group makes group tax losses of $1,700 and group net capital losses of $3,500 which are carried forward to the 2006–07 income year.

There is a change of majority ownership of the head company during the 2005–06 year but this does not result in the head company joining another consolidated group. The head company must satisfy the same business test in later income years to utilise the losses carried forward comprising tax losses of $3,900 ($2,200 + $1,700) and net capital losses of $3,500.

The head company completes part C, item **3** on the schedule as follows:

Tax losses	**Q**	3,900.00
Net capital losses	**R**	3,500.00

PART D LIFE INSURANCE COMPANIES

The head company of a consolidated group that has one or more subsidiary members that are life insurance companies at any time is taken to be a life insurance company for the purposes of an assessment of income tax. Only those head companies that have complying superannuation class tax losses or virtual PST net capital losses carried forward to later income years are required to complete part D.

Complying superannuation class tax losses carried forward to later income years

Show at **T** the amount of complying superannuation class tax losses carried forward to later income years.

Generally, a life insurance company will have a tax loss of the complying superannuation class for an income year if the company's complying superannuation deductions for that income year exceed the sum of:

- the complying superannuation assessable income for that income year, and
- net exempt income for the income year that is attributable to the virtual PST assets.

Virtual PST net capital losses carried forward to later income years

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

A life insurance company has a capital loss from virtual PST assets 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.

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PART E 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. The calculation of such a foreign loss has been modified by the *New Business Tax System (Thin Capitalisation) Act 2001*. 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.

These losses cannot be used to offset income in the other classes or to offset 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.

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, but excluding
  - interest that is received in the active conduct of a trade or business – for example, interest on receivables
  - nterest derived from money lending – for example, a banking business
  - nterest that falls in the offshore banking income class
  - return on an equity interest in a company
- modified passive income is passive income other than amounts that fall within the interest class, the offshore banking income class, or from an asset held in connection with an actively carried on insurance business, including
  - 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 trademarks
  - passive commodity gains
- offshore banking income – certain income derived through an offshore banking unit, including
  - 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 19

A company in the 2005–06 income year derives modified passive income of $1,000. There are no prior year foreign source losses relating to that class of foreign income. 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.

1 FOREIGN SOURCE LOSSES TRANSFERRED FROM JOINING ENTITIES (INCLUDING HEAD COMPANY) – excludes losses of controlled foreign companies (CFCs)

Show at **A**, **B**, **C** and **D** the amounts of foreign source losses, if any, for each of the four classes of income that has been transferred from joining entities, including the head company, to the head company during the 2005–06 income year.

When an entity joins a consolidated group as a subsidiary member part way through the entity's income year, it calculates its taxable income or loss for the period up to the time it joins the group. Generally, any unused carry forward losses are transferred to the head company if the losses could have been used by the joining entity, assuming sufficient income, in the 'trial year', which generally begins 12 months before joining the consolidated group and ends immediately after the joining time. In certain circumstances, the trial year may be a shorter period than 12 months. See subsection 707-120(2) of ITAA 1997.

Whether the losses could have been used by the joining entity in the trial year is determined by applying modified versions of the usual tests for deducting and applying losses.

A joining entity is any eligible entity that joins a consolidated group. For details of who can and cannot be members of a consolidated group, see sections 703-15 and 703-20 of ITAA 1997.

EXAMPLE 20

A consolidated group comes into existence on 1 July 2005. During the 2005–06 income year foreign source losses are transferred to the head company from joining companies listed hereunder which satisfy the continuity of ownership and control transfer tests or the same business transfer test.

Joining company	Joining time	Foreign loss related to claim of assessable foreign income			
		Interest $	Modified passive ($)	Offshore banking ($)	All other ($)
A	1.7.2005	3,400	1,200		
B	1.7.2005	5,400			
C	9.8.2005		3,100		
D	6.6.2006				8,500

The head company completes part E, item **1** on the schedule as follows:

Interest income	**A**	8,800.00
Modified passive income	**B**	4,300.00
Offshore banking income	**C**	.00
All other foreign source income	**D**	8,500.00

2 GROUP/TRANSFERRED FOREIGN SOURCE LOSSES UTILISED – excludes losses of CFCs

Show at **E**, **F**, **G** and **H** the amounts of group and transferred foreign source losses, if any, relating to each of the four classes of income that were utilised.

A head company utilises a foreign source loss in respect of a class of assessable foreign income to the extent that the loss is taken into account in reducing the head company's assessable foreign income of that class.

Group foreign source losses are those foreign source losses that have been generated by the consolidated group. Group foreign source losses are effectively utilised before transferred foreign source losses.

Transferred foreign source losses are foreign source losses that have been made outside the consolidated group and transferred into the group from an entity when it joins the group.

Before utilising a group loss or a transferred loss, a head company is required to pass the continuity of ownership and control tests or the same business test.

For more information on the conditions applying to the continuity of ownership test, see **1 Tax losses transferred from joining entities (including head company) at consolidation** in part A on page 2. For more information on the same business test, see sections 165-13 and 165-210 of ITAA 1997, Taxation Ruling TR 1999/9 and draft taxation ruling TR 2006/D4.

Transferred losses

Foreign source losses generated by a consolidated group – group losses – are effectively utilised before transferred foreign source losses. See paragraph 707-310(3)(b) of ITAA 1997.

All losses transferred to a head company for the first time from the entity that actually made them constitute a bundle of losses. Losses within the bundle will be categorised by the 'sort of loss' such as a tax loss or a foreign source loss in respect of a class of assessable foreign income. See section 707-315 of ITAA 1997.

Available fraction

An available fraction is worked out for each loss bundle. The available fraction limits the annual rate at which the bundle's losses may be recouped by the head company. Where losses are transferred for the first time, the available fraction is calculated like this:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

The modified market value of a joining entity is the amount that would be the market value of the entity at the joining time if:

- the entity has no losses and the balance of its franking account is nil
- the subsidiary members of the group at the time are separate entities and not divisions or parts of the head company of the group
- the entity's market value did not include an amount

attributable (directly or indirectly) to a membership interest in a member of the group (other than the entity) that is a corporate tax entity or an entity that transferred losses to the head company, and
- a trust (other than a corporate tax entity or a trust with losses) contributes to the joining entity's market value only to the extent attributable to fixed entitlements (at joining time), to income or capital of the trust that is not attributable (directly or indirectly), to membership interests in another member of the group that is a corporate tax entity, or a trust with losses.

See section 707-325 of ITAA 1997.

An increase in the value of the loss entity is excluded from the entity's modified market value if the increase results from either of these events:
- an injection of capital into the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee, or
- a non-arm's length transaction that involved the loss entity, its associate or, if the loss entity is a trust, an associate of the trustee.

The rules apply to events that occur in the four years before the loss entity joins the group; however, they do not apply to events that occurred before 9 December 2000. See subsections 707-325(2) and (4) of ITAA 1997 and section 707-329 of the *Income Tax (Transitional Provisions) Act 1997*.

The head company's adjusted market value at the initial transfer time is the amount that would be the market value at that time if:
- the head company did not have a loss of any sort for an income year ending before that time, and
- the balance of the head company's franking account was nil at that time.

See subsection 707-320(1) of ITAA 1997. The value for the head company is worked out on the basis that subsidiary members of the consolidated group are part of the head company.

> **!** NOTE
> The Commissioner will have a statutory obligation to ensure compliance with the market valuation requirements of the consolidation regime and to form a view as to whether valuations undertaken are accurate. The publication *Consolidation and market valuation* (NAT 7803) will help you meet your tax obligations.

The available fraction is adjusted if certain events happen – for example, the consolidated group acquires a new loss entity or the sum of the available fractions in the group exceeds 1. See subsection 707-320(2) of ITAA 1997.

The use of transferred losses is apportioned when their available fraction applied for only part of the income year or when the available fraction changes during the income year. See section 707-335 of ITAA 1997.

Apply the available fraction using a three-step process as follows:
1 Work out the amount of each category of the group's income or gains as specified in column 2 of the table in subsection 707-310(3) of ITAA 1997. This is the group's total income or gains for each category less relevant deductions including group losses and concessional losses (but not transferred losses whose use is limited by their available fraction).
2 Multiply each category amount by the bundle's available fraction. The result is taken to be the head company's only income or gains for that category.
3 On the basis of the step 2 assumption, work out a notional taxable income for each loss bundle.

This process enables the head company to determine the amount of transferred losses of each sort it can use from the loss bundle to determine its actual taxable income.

> **!** NOTE
> An example applying the available fraction using the three-step process is on page 22.
>
> The available fraction for a foreign source loss is unaffected by the value donor rules. This means that where a value donor donates value to a loss company – the real loss-maker – the available fraction for a real loss-maker's foreign source loss is the fraction that would have applied had value not been donated. Likewise, the available fraction for a value donor's foreign loss is what it would have been if the value donor had not donated some or all of its value to the real loss-maker. Therefore, a single loss bundle may have two relevant available fractions – one that applies to the bundle's foreign source losses and one that applies to its tax and net capital losses.

3 TRANSFERRED FOREIGN SOURCE LOSSES UTILISED

> **!** NOTE
> Do not include group foreign source losses – losses generated by a consolidated group – at item **3**.

This item requires information on the amount of transferred foreign source losses utilised. Transferred foreign source losses are foreign source losses that have been made outside the consolidated group and transferred into the group from an entity when it joins the group. A head company utilises a foreign source loss in respect of a class of assessable foreign income to the extent that the loss is taken into account in reducing the head company's income of that class.

Show at **I**, **L**, **O**, **R**, **U** and **X**, as required, the TFNs of those joining entities that had foreign source losses from their loss bundles utilised applying the available fraction method. A bundle of losses consists of all the losses of a joining entity that are transferred to the head company at the same time.

If foreign source losses have been utilised in respect of six or fewer loss bundles, complete the number of labels required. If foreign source losses have been utilised in respect of more than six loss bundles, show the joining entity TFNs for those loss bundles that had the six largest amounts of foreign source losses utilised.

Show at **J**, **M**, **P**, **S**, **V** and **Y**, as required, the corresponding available fractions calculated for the loss bundles for joining entities whose TFNs are recorded at **I**, **L**, **O**, **R**, **U** and **X**, respectively. Each available fraction is to be completed to three decimal places (for example, 0.475, 0.520, 0.700).

Where losses are transferred for the first time, the available fraction is calculated like this:

$$\frac{\text{modified market value of the joining loss entity at the initial transfer time}}{\text{adjusted market value of the head company at the initial transfer time}}$$

For details of how the modified market value of the joining loss entity and adjusted market value of the head company are determined, see **2 Group/transferred foreign source losses utilised – excludes losses of CFCs** in part E on page 30.

Calculate available fractions and then adjust them to three decimal places. Round up the third decimal place if the fourth decimal place is 5 or more.

Where an available fraction has been adjusted as a result of certain events – for example, a new member joined the group and transferred a loss bundle – show the adjusted available fraction applicable at the end of the year of income.

An available fraction cannot be a negative amount or greater than one. If the sum of the group's available fractions would total more than one, each available fraction is proportionally reduced. See subsection 707-320(2) of ITAA 1997.

For more information regarding the calculation of the available fraction, see **2 Group/transferred foreign source losses utilised – excludes losses of CFCs** in part E on page 30.

The available fraction for a foreign source loss is unaffected by the value donor rules. This means that where a value donor donates value to a loss company – the real loss-maker – the available fraction for a real loss-maker's foreign source loss is the fraction that would have applied had value not been donated. Likewise, the available fraction for a value donor's foreign loss is what it would have been if the value donor had not donated some or all of its value to the real loss-maker. Therefore, a single loss bundle may have two relevant available fractions – one that applies to the bundle's foreign source losses and one that applies to its tax and net capital losses.

Show at **K**, **N**, **Q**, **T**, **W** and **Z**, as required, the corresponding amount of transferred foreign source losses utilised from loss bundles of joining entities whose TFNs are recorded at **I**, **L**, **O**, **R**, **U** and **X**, respectively. The bundle amount may include foreign source losses utilised in relation to one or more classes of assessable foreign income. If foreign source losses have been utilised from more than six loss bundles, show the six largest amounts utilised.

EXAMPLE 21

A consolidated group determines the following amounts of foreign source losses utilised from eight loss bundles for the 2005–06 income year:

Co	Transferor TFN	Available fraction	Foreign losses utilised $
A	111 111 111	0.010	40
B	222 222 222	0.324	4,200
C	333 333 333	0.113	2,300
D	444 444 444	0.102	5,500
E	555 555 555	0.122	700
F	666 666 666	0.095	850
G	777 777 777	0.077	1,300
H	888 888 888	0.136	1,800

The head company completes part E, item 3 on the schedule as follows:

	Transferor TFN		Available fraction		
I	222222222	**J**	0.324	**K**	4,200.~~00~~
L	333333333	**M**	0.113	**N**	2,300.~~00~~
O	444444444	**P**	0.102	**Q**	5,500.~~00~~
R	666666666	**S**	0.095	**T**	,850.~~00~~
U	777777777	**V**	0.077	**W**	1,300.~~00~~
X	888888888	**Y**	0.136	**Z**	1,800.~~00~~

Information has been recorded for the loss bundles that had the six largest amounts of foreign source losses utilised.

4 GROUP FOREIGN SOURCE LOSSES CARRIED FORWARD TO LATER INCOME YEARS – excludes losses of CFCs

NOTE
Do not show transferred foreign source losses made outside the consolidated group and transferred into the group at item **4**. See **5 Transferred foreign source losses carried forward to later income years** on the next page.

Show at **A**, **B**, **C** and **D** the amounts of group foreign source losses, if any, relating to each of the four classes of income during the 2005–06 income year that are available to be carried forward to later income years.

Group foreign source losses are those foreign source losses that have been generated by the consolidated group.

5 TRANSFERRED FOREIGN SOURCE LOSSES CARRIED FORWARD TO LATER INCOME YEARS – excludes losses of CFCs

> **NOTE**
>
> Do not show group foreign source losses generated by the consolidated group at item **5**. See **4 Group foreign source losses carried forward to later income years** on the previous page.

Show at **E**, **F**, **G** and **H** the amounts of transferred foreign source losses, if any, relating to each of the four classes of income that are available to be carried forward to later income years.

Transferred foreign source losses are foreign source losses that have been made outside the consolidated group and transferred into the group from an entity when it joins the group.

6 CONTROLLED FOREIGN COMPANY (CFC) LOSSES

If the head company 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 2005–06 income year, show these amounts at item **6**.

For modifications relating to losses of a CFC, see sections 424 to 431 of ITAA 1936. For information on how to calculate the loss of a CFC, see the *Foreign income return form guide*, available on our website.

The amounts shown at **I** and **J** are the totals of the head company's share of losses of CFCs. The head company'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 **I** the total of the head company's share of losses of CFCs, from statutory accounting periods that end within prior income years, which have been claimed as notional allowable deductions for statutory accounting periods that end within the 2005–06 income year.

CFC losses carried forward

Show at **J** the total amount of the head company's share of losses of CFCs that are available to be carried forward to statutory accounting periods that end in later income years.

ABBREVIATIONS

ABN	Australian business number
CFC	controlled foreign company
CGT	capital gains tax
Commissioner	The Commissioner of Taxation
COT	continuity of ownership test
film loss	film component of tax loss
head company	head company of a group as defined in ITAA 1997
ITAA	Income Tax Assessment Act
MEC group	multiple entry consolidated group
PST	pooled superannuation trust
SBT	same business test
TFN	tax file number

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MORE INFORMATION

INTERNET

- For general tax information and to download publications and rulings, visit www.ato.gov.au

PUBLICATIONS

Publications referred to in these instructions

- *Company tax return instructions 2006* (NAT 0669–6.2006)
- *Consolidation and market valuation* (NAT 7803)
- *Consolidation reference manual* (NAT 6835) (available at **www.ato.gov.au**)
- *Guide to capital gains tax 2006* (NAT 4151–6.2006)
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Income Tax (Transitional Provisions) Act 1997*
- *Taxation Ruling TR 1999/9 – The operation of sections 165-13 and 165-210, paragraph 165-35(b), section 165-126 and section 165-132*
- *Taxation Ruling TR 2004/9 – Consolidation: what is meant by 'injection of capital' in section 707-325 of the Income Tax Assessment Act 1997*
- *Draft Taxation Ruling TR 2006/D4 – Application of the same business tests to consolidated and MEC groups – principally, the interaction between section 165-210 and section 701-1 of the Income Tax Assessment Act 1997*

Other relevant publications

- *Foreign income return form guide 2006* (NAT 1840) (available at **www.ato.gov.au**)
- *Fund income tax and regulatory return instructions 2006* (NAT 1601–6.2006)
- *Partnership and trust tax returns instructions 2006* (NAT 2297–6.2006)

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- **Tax agents** **13 72 86**

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  For information about choice of superannuation funds and the role of the employer
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  For information about new measures for business
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  For information about outstanding lodgment or payment obligations for activity statements, PAYG withholding, income tax or fringe benefits tax
- **Personal** **13 28 61**

  Individual income tax and general personal tax enquiries
- **Superannuation** **13 10 20**
- **Fax** **13 28 60**

  To get information about business tax, tax reform, superannuation, excise duty, fuel schemes, non-profit organisations personal tax sent to your fax machine, phone **13 28 60** and follow the instructions.

OTHER SERVICES

Translating and Interpreting Service **13 28 60**

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service for help with your call.

National Relay Service **13 36 77**

If you have a hearing or speech impairment and use a TTY or modem, phone the National Relay Service.

For 1800 free call numbers phone and quote the number you require. **1800 555 677**

Speech to Speech Relay Service **1300 555 727**

If you have a speech impairment and do not use a TTY or modem, phone the Speech to Speech Relay Service.

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Consolidated groups losses schedule instructions 2006