

Loss continuity rules to be amended

Tony Wilkinson, Fiona Heiford, Maria Clezy

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The Government has recently announced that it will introduce new rules to allow companies to carry forward tax losses that may otherwise be forfeited under the current stringent rules. The proposed rules have not yet been released but are expected to be added later this month to legislation currently before Parliament.

Details

The proposed rules will introduce a business continuity test (BCT) which will apply as a backstop for those companies which have failed to maintain at least 49% continuity of ownership (the current threshold for the forward carrying of tax losses).

The BCT will resolve problems caused by the current legislation which requires that companies forfeit their tax losses if they have a significant change in ownership. The current legislation presents a significant tax barrier for start-ups and small and medium enterprises which incur losses and then undertake a capital raise process that results in a change in the ownership of the company. Such commercially necessary actions can inadvertently result in the forfeiture of significant and valuable tax losses.

In addition to the BCT, the new rules will include specific anti-avoidance measures that target the inappropriate use of tax losses.

The new rules will be included in a supplementary order paper to the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Bill when it is reported back from the select committee, and are expected to apply from the 2020-21 year onwards. This should allow businesses that have had to re-capitalise as a result of the COVID-19 pandemic to take advantage of the new test.

Our view

The rushing through of the new rules without the usual public consultation will attract criticism from various commentators. However, the new rules are concessionary, will apply to all businesses and address long standing problems with our current tax loss continuity regime. Accordingly, in our view the Government's announcement is to be applauded as a move in the right direction.

We will provide further details and commentary on the new rules as soon as more information becomes available. If you would like to discuss these proposed changes please contact a member of our [tax team](#).

Auckland

188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659