



## **CORPORATE TAX LOSSES – CAN I USE THEM?**

Draft legislation has been released which will facilitate access to corporate losses for companies with shares that have unequal rights to dividends, capital distributions or voting power.

This legislation may apply to companies with multiple classes of shares (i.e. where the different classes of shares have unequal dividend, voting and/ or capital rights), such as a company with preference shares.

The draft legislation makes it clear when such companies can utilise revenue losses, capital losses and bad debt deductions.

The basic utilisation rules remain the same – that is, a company must satisfy either the continuity of ownership test or the same business test.

Broadly, to deduct a tax loss, the continuity of ownership test requires that shares with more than 50% of the voting, dividend and capital rights be owned by the same persons during the test period.

However, where a company has shares with unequal rights attached to them, the continuity of ownership test is modified by the draft legislation.

Where such a company fails the continuity of ownership test, the company can reapply the test disregarding debt interests (e.g. certain loans) and certain classes of shares.

If the test is still failed, it can be reapplied again based on the assumption that the remaining shares have fixed dividend and capital distribution rights for the purposes of applying the test.

Lastly, the continuity of ownership test is also modified so that if a company has shares with different voting rights, the voting power of those shares is tested solely by reference to the maximum votes that can be cast in relation to electing the company's directors or adopting and amending the company's constitution.

### **TIP**

Businesses that previously were not entitled to use their tax losses may now have access to those losses. It might be worthwhile checking to see if this applies to your business.

If you would like further information or require assistance in relation to the above please do not hesitate in contacting our office on 02 9555 1309.

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