

New tax laws will make it easier for SMEs to use tax losses



Patrick Stafford Wednesday 23 September 2009

New amendments to the Australian Tax Office's recoupment laws will make it easier for SMEs to obtain a refund if they have incurred tax losses over the past seven years, experts say.

According to draft legislation from assistant treasurer Nick Sherry, company loss recoupment rules will be changed to assist companies that have share structures that use different classes of shares, in an attempt to help them meet the "continuity of ownership" test.

Currently, the test requires shares carrying more than 50% of all voting, dividend and capital rights be beneficially owned by the same person at all times. If this test cannot be met, a tax loss may be unable to be claimed.

However, many companies that have shares with unequal rights to dividends, capital distributions or voting power may fail the test, even though there may be no significant change in beneficial ownership over a number of years.

The new changes will allow companies which fail the test to reapply by disregarding debt interests and secondary classes of shares. If the company still fails the test, it can be applied again by fixing dividends and capital rights to the principal class of shares.

"The proposed amendments are beneficial as they will make it easier for companies to satisfy the continuity of ownership test, and therefore to use losses," Sherry said in a statement. Greg Hayes, director of Hayes Knight, says the new laws will relax some restrictions and ultimately help a number of businesses which otherwise would have failed the test.

"One of the problems with tax losses is that they are incurred over a number of years. If you're trying to recoup losses, you have to assess each of the lost years and the current position. So this process can be problematic, and these changes certainly help in that regard... they are certainly a plus."

Mark Morris, CPA senior tax counsel, says the new laws will be useful for businesses which have been focusing on raising funds rather than tax issues.

"This is a constructive measure and we applaud the Government for introducing it. When you're trying to raise funds, preferential shares are often a mechanism to do that and the last thing on your mind is how those shares are going to affect you in claiming a tax loss. I think the provisions are designed to correct unintentional anomalies and make the provisions workable, and the more companies that can use that, then the better they'll be."

Ray Cummings, partner at Pitcher Partners, agrees and says businesses should look into recouping their tax losses even if they have failed the continuity of ownership test in the past.

"In terms of the continuity of ownership testing, I think these amendments, while technical, have the intention of making things easier and I think that's what they're going to do. Tax losses are always an absolute nuisance of having to work things out and hopefully this will make things easier."

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