



**INFORMATION
EXCHANGE**
Step Up to Advice

2105: FEBRUARY 2021

AUSTRALIAN TAX ADVISER

Tony Westhuysen

Principal, Solutions in Taxation

INFORMATION EXCHANGE CORPORATION

L17, 40 Mount Street,
North Sydney NSW, 2060

E: admin@ifx.com

T: 61 2 9956 7775

W: www.ifx.com.au

ARCHIVE SEARCHING?

Use your username and
password to log onto
www.ifx.com.au to search our
archives and retrieve copies.

NEED TO ASK AN ADVISER?

Go to www.ifx.com.au
to connect.

Please call customer support
on 1300 360 905 if you have
any difficulties.

SUBSCRIBE TO THIS PUBLICATION

[Click here](#)

Can we help?

Call 1300 360 905

Email admin@aifx.com.au

IN THIS ISSUE

SECTION 1 – PROFESSIONAL DEVELOPMENTS.....	1
THE NEW LOSS CARRY BACK RULES.....	1
¶5.1 Eligible entities.....	1
¶5.2 Eligible losses.....	1
¶5.3 Other conditions.....	2
¶5.4 Carrying back the tax loss.....	3
¶5.5 Calculating the amount of tax offset.....	6
¶5.6 Integrity rules.....	7
SECTION 2 – PROFESSIONAL CURRENCY	8
BILLS AND LEGISLATION.....	8
¶5.7 JobMaker Hiring Credit: draft Statutory Rules released.....	8
¶5.8 Other Legislation	15
CASES AND DECISIONS	15
¶5.9 Extension of time for review application refused	15
¶5.10 Taxpayer refused leave to amend grounds of objection	16
¶5.11 ADF invalidity pension/pay taxed concessionally in two cases but not in the third – ATO only partly successful on appeal.....	17
APPEALS NEWS.....	19
¶5.12 Glensore Investment Pty Ltd	19
¶5.13 Advanced Holdings Pty Limited atf The Demian Trust v FCT	20
¶5.14 FCT v Travelex Ltd	20
¶5.15 ACN 154 520 199 Pty Ltd (in liquidation) v FCT	21
RULINGS AND GUIDELINES.....	21
¶5.16 Trading stock: standard value of goods taken for private use: 2020–21.....	21
¶5.17 Buy-back or redemption of hybrid securities – methodologies for determining market value.....	22
¶5.18 Methodologies for determining market value	23

Continued



**INFORMATION
EXCHANGE**
Step Up to Advice

AUSTRALIAN TAX ADVISER

2105: FEBRUARY 2021

Tony Westhuysen

Principal, Solutions in Taxation

INFORMATION EXCHANGE CORPORATION

L17, 40 Mount Street,
North Sydney NSW, 2060

E: admin@ifx.com

T: 61 2 9956 7775

W: www.ifx.com.au

ARCHIVE SEARCHING?

Use your username and
password to log onto
www.ifx.com.au to search our
archives and retrieve copies.

NEED TO ASK AN ADVISER?

Go to www.ifx.com.au
to connect.

Please call customer support
on 1300 360 905 if you have
any difficulties.

SUBSCRIBE TO THIS PUBLICATION

[Click here](#)

Can we help?

Call 1300 360 905
Email admin@aifx.com.au

IN THIS ISSUE

¶5.19	OECD hybrid mismatch rules – targeted integrity rule	23
¶5.20	SG shortfall: salary sacrifice arrangements for entertainers and contracts for labour	24
¶5.21	Capital notes; return of capital	24
SECTION 3 – QUESTIONS AND ANSWERS		25
¶5.22	Setting up a trust for superannuation proceeds in a BDBN	25
¶5.23	LRBA arrangements with related parties.....	26
¶5.24	Issue of public listed shares to employee as a bonus payment	27
¶5.25	Tax invoice generated by university property agent: Input tax credits	28
¶5.26	Implications of private company selective share buyback	29
¶5.27	Payment of dividend without cash.....	30
¶5.28	Financial assistance from SMSF.....	31
¶5.29	Transfer pricing implications of employee wage reimbursement.....	32
¶5.30	Terminal medical condition payout from SMSF.....	33

SECTION 1 – PROFESSIONAL DEVELOPMENTS

THE NEW LOSS CARRY BACK RULES

No-one likes to make a loss, but in the era of the COVID pandemic, losses were, for the most part, unavoidable. Add to that, the largesse of the government in allowing most entities to immediately expense most depreciating assets means that even profitable entities will likely show a tax loss for the 2019–20 and/or 2020–21 income years.

As a welcome part of the COVID economic recovery strategy, the federal government introduced a reworked version of the loss carry back rules, which had existed for just a single tax year back in 2012–13. Under the new rules, companies are able to claim a refundable tax offset in their 2020–21 and 2021–22 company tax returns. The legislation is to be found in the [Treasury Laws Amendment \(A Tax Plan for the COVID-19 Economic Recovery\) Bill 2020](#), which received Royal Assent on 14/10/2020 as Act no 92 of 2020.

¶5.1 Eligible entities

Let's start by looking at who can claim these loss carry-backs. Well, to be eligible for the offset, the taxpayer must:

- carry on a business – entities who carry on an activity that falls short of what constitutes a business will miss out¹
- be a company, a corporate limited partnership or a public trading trust (so, for all practical purposes, the entity must be a company); and
- have an aggregated annual turnover² of less than \$5 billion for the income year in which the loss was made; this will include all but the largest of our companies in Australia.

In addition to these conditions, the taxpayer must have been a company, a corporate limited partnership or a public trading trust for the **whole of the income year** in which the tax offset is being claimed, the whole of the income year it chooses to carry the loss back to (ignoring any part of the year before it existed), and any income years between those two years.

¶5.2 Eligible losses

Entities can only carry back tax losses **made** in the 2019–20, 2020–21 or 2021–22 income years and can only use a tax loss once. In addition, entities can only **carry those losses back** to the 2018–19, 2019–20 or 2020–21 income years. Logically, a loss offset can only be claimed in income years in which the company was liable to pay income tax.

¹ For what amounts to the carrying on of a business, the ATO generally relies on Taxation Ruling TR 97/11

² An entity's aggregated annual turnover includes its own turnover plus the turnovers of all its affiliates and connected entities.