IRAS e-Tax Guide

UTILISING
UNABSORBED CAPITAL ALLOWANCES,
TRADE LOSSES AND DONATIONS

INLAND REVENUE
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OF SINGAPORE

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Utilising Unabsorbed Capital Allowances, Trade Losses and Donations

1 Aim

1.1 This e-Tax guide sets out the administrative procedures with regard to the carry-forward and carry-back of unabsorbed capital allowances, trade losses and donations. It consolidates the three e-tax guides[1] issued previously on utilising unabsorbed capital allowances, trade losses and donations.

1.2 This e-tax guide would be useful to any company wishing to deduct its unabsorbed capital allowances, trade losses and donations against its past year's or future years' assessable income.

2 At a glance

2.1 A company with unabsorbed capital allowances, trade losses or donations can:

a. transfer the current year unabsorbed capital allowances, trade losses and donations to its related companies for deduction against their assessable income via group relief[2];

b. keep them for deduction against its future assessable income; or

c. carry back its current year unabsorbed capital allowances and trade losses for deduction against its assessable income of the immediate preceding year of assessment[3].

2.2 If the company chooses the latter two, it must not have a substantial change in its shareholders. If there is a substantial change, the company may apply for waiver of the requirement if the change is not for deriving any tax benefit or obtaining tax advantage.

2.3 Please refer to the paragraphs below for more details.

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[1] This e-Tax guide is a consolidation of three previous e-Tax guides on utilising unabsorbed capital allowances, trade losses and donations:
a) "Carry-forward of losses and capital allowance" published on 17 Jul 1993;
b) "Set-off of carry-forward losses and allowances under Sections 37(5) and 23(2) of the Singapore Income Tax Act – Circumstances under which a company secretary's certificate may be accepted in lieu of an external auditor's certificate" published on 28 Dec 1995; and
c) "Simplication of Income Tax rules and procedures for companies – Set off of carry-forward losses, donations and allowances under Sections 37(12) and 23(4) of the Singapore Income Tax Act (Revised Edition 2004)" published on 28 Apr 2004.

[2] Please refer to the e-Tax guide on group relief system for more details.

[3] Please refer to the e-Tax guide on carry-back relief system for more details.

3 Glossary

3.1 Assessable income

Assessable income of a company refers to its income from all sources after deducting capital allowances, trade losses, approved donations and other relevant deductions like incremental research and development expenses or investment allowances.

3.2 Immediate preceding YA (for carry-back relief)

The YA immediately before the YA in which the company has trade losses or capital allowances available for carry back. For example, if the company incurred trade losses in year 2011 or is given capital allowances for YA 2012, the immediate preceding YA would be YA 2011.

3.3 ITA

ITA denotes Income Tax Act

3.4 No substantial change in the shareholders of a company

There is no substantial change in shareholders if 50% or more of the company's (or its ultimate parent company's) total number of issued shares are held by the same persons as at the relevant dates.

3.5 Relevant dates (for unabsorbed capital allowances)

Carry-forward relief: Last day of the YA in which the capital allowances were given and the first day of the YA in which the capital allowances are to be deducted

Carry-back relief: First day of the YA in which the capital allowances were given and the last day of the immediate preceding YA in which the capital allowances are to be deducted

3.6 Relevant dates (for unabsorbed trade losses and donations)

Carry-forward relief: Last day of the year in which the trade losses and donations were incurred and first day of the YA in which the trade losses and donations are to be deducted

Carry-back relief: First day of the year in which the trade losses were incurred and last day of the immediate preceding YA in which the trade losses are to be deducted

3.7 Same business test

This test determines if a company continues to carry on the same trade or business for which capital allowances are given when carrying forward or back the unabsorbed capital allowances. The test is satisfied if the same trade or business is continued.

3.8 Shareholding test

This test compares the percentage of the shareholdings of a company (or its ultimate parent company) that is held by the same persons as at the relevant dates. The test is satisfied if there is no substantial change in the shareholders as at the relevant dates.

3.9 Unabsorbed capital allowances

The capital allowances claimed by a company (under section 16, 17, 18A (repealed), 18B, 18C, 19, 19A, 19B, 19C, 19D or 20 of the ITA) for a YA that exceeds the company's aggregate taxable income for that YA.

3.10 Unabsorbed donations

The approved donations made by a company in a YA that exceeds its statutory income for that YA. Approved donations are donations approved for tax deduction and made to approved recipients under sections 37(3) (b), (c), (d) or (f) of the ITA.

3.11 Unabsorbed trade losses

The trade losses incurred by a company for a YA that exceed the company's income from all sources for that YA.

3.12 YA

YA denotes year of assessment

4 Tax treatment

4.1 Under the Income Tax Act ("ITA"), a company can choose to:

a) carry forward its unabsorbed capital allowances, trade losses and donations for deduction against its future assessable income ("carry-forward relief"), or

b) carry back its current year unabsorbed capital allowances and trade losses for deduction against its assessable income of the immediate preceding year of assessment ("carry-back relief"),

4.2 To claim the carry-forward or carry-back relief, the company must satisfy two tests, namely the same business test (see definition in paragraph 3.7) and shareholding test (see definition in paragraph 3.8 and details in paragraph 5).

4.3 A summary of the tax treatment for carry-forward relief [4] is provided in the table below:

	Application of		Time Limit	Quantum
	Same business test	**Shareholding test**		
Unabsorbed capital allowances	Yes	Yes	No limit	No limit on the amount to be carry forward
Unabsorbed trade losses	No	Yes	No limit	
Unabsorbed donations	No	Yes	Can carry forward only for five years. Any amount not utilised after the fifth year will be disregarded.	

4.4 A summary of the tax treatment for carry-back relief [5] is provided in the table below:

[4] The conditions for carry-forward relief are provided under sections 23(1), 23(4), 37(8) and 37(12) of the ITA.

[5] The conditions for carry-back relief are provided under section 37E of the ITA.

	Application of		Time Limit	Quantum
	Same business test	Shareholding test		
Unabsorbed capital allowances	Yes	Yes	Can carry back one year only – i.e. deductible against the assessable income of the immediate preceding YA	Limit to current year unabsorbed capital allowances and trade losses. Lower of the unabsorbed amount and assessable income but capped at S$100,000
Unabsorbed trade losses	No	Yes		
Unabsorbed donations	Carry-back relief is not applicable			

5 Shareholding Test

5.1 Before a company can claim carry-forward or carry-back relief, it must satisfy the shareholding test. The company is said to have satisfied the shareholding test when there is no substantial change in its shareholders as at the relevant dates (see definition in paragraphs 3.5 and 3.6).

5.2 A company does not have a substantial change in its shareholders if 50% or more of its (or its ultimate parent company's) total number of issued shares are held by the same persons as at the relevant dates.

5.3 Some examples on the shareholding test are provided below.

<u>Example 1 (no substantial change – carry-forward relief)</u>
Company A wishes to set off its unabsorbed capital allowances, trade losses and donations carried forward from YA 2008 (basis period is year ended 30 September 2007) against the assessable income for YA 2011.

Shareholders	Number of shares		
	31 December 2007	31 December 2008	1 January 2011
A	15	10	10
B	45	50	0
C	40	40	40
D	0	0	50
Total	100	100	100

Unabsorbed	Relevant Dates	% change in shareholding as at the relevant dates	Satisfy shareholding test?
Capital allowances	31 December 2008 1 January 2011	A and C still hold at least 50% of the total shareholdings as at the relevant dates	Yes
Trade losses	31 December 2007 1 January 2011		
Donations	31 December 2007 1 January 2011		

Example 2 (substantial change – carry-forward relief)
Same facts as in example 1 except that shareholdings in the company are now different (as shown below).

Shareholders	Number of shares		
	31 December 2007	31 December 2008	1 January 2011
A	30	30	30
B	30	70	10
C	40	0	0
D	0	0	60
Total	100	100	100

Unabsorbed	Relevant Dates	% change in shareholding as at the relevant dates	Satisfy shareholding test?
Capital allowances	31 December 2008 1 January 2011	A and B hold less than 50% of the total shareholdings as at 1 January 2011	No
Trade losses	31 December 2007 1 January 2011		
Donations	31 December 2007 1 January 2011		

Example 3 (carry-back relief)
Company B wishes to carry back its unabsorbed capital allowances and trade losses for YA2011 (basis period is year ended 30 September 2010) to set off against the assessable income for YA2010.

Shareholders	Number of shares		
	1 January 2010	31 December 2010	1 January 2011
A	30	30	30
B	30	70	70
C	40	0	0
Total	100	100	100

Unabsorbed	Relevant Dates	% change in shareholding as at the relevant dates	Satisfy shareholding test?
Capital allowances	1 January 2011 31 December 2010	A and B still hold at least 50% of the total shareholdings as at the relevant dates	Yes
Trade losses	1 January 2010 31 December 2010		

5.4 To substantiate that the shareholding test has been satisfied, the company claiming the carry-forward or carry-back relief is to provide the Comptroller of Income Tax ("CIT") with the following information:

	Information requirements
For publicly-listed company	This section would apply where the company or its ultimate parent company is a publicly listed company ("PLC") whose shares are actively traded on a recognised stock exchange (whether local or foreign). The company is to provide a confirmation from: • The external auditor of the PLC; or • The company secretary of the PLC that there is no merger or takeover of the PLC between the relevant dates (both dates inclusive). The CIT may accept the same confirmation from the following parties if the company can explain why it is unable to provide the above confirmation: • The audit committee[6] of the PLC; or • The financial controller of the PLC; or • The director the PLC
For non-publicly listed company	This section would apply where the company and its ultimate parent company are both not a publicly listed company ("non-PLC"). The company is to provide either: a) A list of its ultimate shareholders and their respective shareholdings as at the relevant dates showing that the shareholding test has been met; or b) Confirmation from: • The external auditor of the company; or • The company secretary of the company that there is no substantial change in the ultimate shareholders and their respective shareholdings in the company as at the relevant dates. The CIT may accept the same confirmation from the following parties if the company can explain why it is unable to provide the above confirmation: • The audit committee of the company; or • The financial controller of the company; or • The director the company

[6] Under section 201B of the Companies Act, every listed company in Singapore shall have an audit committee. For companies not incorporated in Singapore, an equivalent committee or person as required under the law of that foreign country would be accepted.

6 Waiver of shareholding test

6.1 Where a company is unable to satisfy the shareholding test, it will not be able to claim carry-forward or carry-back relief. Its unabsorbed capital allowances, trade losses and donations would be disregarded. However, the company may apply for waiver of the shareholding test. To grant the waiver, the CIT has to be satisfied that the substantial change in shareholders is not for the purpose of deriving any tax benefit or obtaining any tax advantage.

6.2 Generally, a substantial change of shareholders brought about by the following situations will not be regarded as for the purpose of deriving tax benefit or obtaining any tax advantage:

a) Nationalisation of a private/public company; or

b) Privatisation of a government-owned enterprise; or

c) Normal trading of the shares of the applicant or those of its holding company on a recognised stock exchange; or

d) Change carried out for genuine commercial reasons and was not tax motivated, e.g. as part of a company rescue package.

6.3 To apply for the waiver of shareholding test, companies should provide the following information for the CIT's review:

a) Date of the substantial change in shareholders or takeover;

b) Details of the reasons (both commercial and non-commercial) leading to the substantial change in shareholders or takeover;

c) Advantages derived by the takeover company;

d) Details of the net worth of the applicant;

e) The price paid by the takeover company for the shares of the applicant and the basis on which such price was determined;

f) Reason why the share price does not commensurate with the net worth of the applicant;

g) Future plans of the applicant and whether such plans are implemented. If not, give reasons;

h) Whether any activities of the takeover company or any other company under common control have been or will be transferred to the applicant. If so, furnish details;

i) Whether future expansion of the associated companies under common control has been or will be diverted to the applicant. If so, furnish details;

j) A chart showing the group structure before and after the substantial change in shareholders.

6.4 There could be a considerable time lag between substantial change in shareholders and claim for unabsorbed capital allowances, trade losses and donations. A timely application would make it easier for companies to retrieve relevant records to support their application for waiver of shareholding test. As such, companies may submit their application for waiver of shareholding test even if they are not in the position to utilise the unabsorbed items.

6.5 Where the waiver is granted, the unabsorbed capital allowances, trade losses and donations can only be set off against the gains or profits derived from the same trade or business as that from which such unabsorbed items arose.

7 Frequently asked questions

7.1 Q1: Can my company carry forward its unabsorbed claims on Productivity and Innovation Credits (PIC) to the subsequent YA?

A1: Unabsorbed PIC claims are treated in the same manner as unabsorbed capital allowances (e.g. PIC claims on automated equipment) or unabsorbed trade losses (e.g. PIC claims on training expenses). Hence, your company can claim carry-forward and carry-back relief on the unabsorbed PIC claims. Such claim is subject to the same conditions as unabsorbed capital allowances and trade losses.

7.2 Q2: Would the waiver of shareholding test be granted in cases that fall outside the situations mentioned in paragraph 6.2?

A2: The situations in paragraph 6.2 are not exhaustive. For cases that fall outside these situations, the company may write to IRAS to apply for a waiver of shareholding test provided the change is not tax motivated.

8 Contact information

8.1 If you have any enquiries or need clarification on this Guide, please call 1800-356 8622.

9 Updates and amendments

	Date of amendment	Amendments made
1	29 Jun 2012	Paragraph 7 of the e-Tax guide on “Carry-forward of losses and capital allowances” published on 17 July 1993 has been removed. Paragraph 7 sets out the conditions for utilisation of unabsorbed losses and capital allowances that have not been disregarded prior to 1988. The paragraph has been removed as companies would had already utilised such losses and capital allowances over a span of 24 years.