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Unabsorbed capital allowances, losses . donations[1]

¶9-100 Unabsorbed capital allowances

Paragraph ¶8-500 discusses the tax treatment of capital allowances in the determination of what is statutory income. This paragraph discusses the tax treatment where there is any excess of capital allowances over the income of the trade, business or profession in respect of which the allowances were granted. The excess capital allowances must be set off against the total amount of income from all the other sources for the year preceding the year of assessment

Where a person's gains or profits chargeable for that year of assessment are insufficient to fully set off the capital allowances available in that year of assessment, there are three options available to the taxpayer. These options are discussed separately for companies and for individuals carrying on businesses in a sole-proprietorship or a partnership.

Companies

The options available to a company where its gains or profits chargeable for any year of assessment are insufficient to fully set off the capital allowances available in that year of assessment are as follows:

(1) transfer any current year's unabsorbed capital allowances (but only to the extent of the claimant's amount of assessable income) if the company qualifies for the loss transfer system of group relief (see ¶9-500);

(2) carry back any current year's unabsorbed capital allowances up to a specified amount for set-off against its assessable income for the immediate preceding year of assessment (see ¶9-700); or

(3) to add any remaining unabsorbed capital allowances to next year's allowances (sec 23(1)).

The carry-back and/or the carry-forward of the unabsorbed capital allowances is/are subject to two conditions:

(1) the company continues to carry on the same trade, profession or business in respect of which the allowances arose; and

(2) there is no substantial change in the company's shareholders and their shareholdings at the relevant dates.

Because of the need to determine whether the shareholders' continuity test has been satisfied before any capital allowances could be utilised in a subsequent year of assessment, the company has to keep track of the years of assessment to which the capital allowances relate (see ¶9-400).

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[1] Angela Tan & Tan How Teck, Singapore Master Tax Guide, (Singapore:Seng Lee Press Pte Limited,2006)pp.231-238.

¶9-200 Losses from trade, business, profession or vocation

Section 37(3)(a) provides that a person who has incurred a loss can deduct it against his or her statutory income (ie the sum total of income from all sources) provided the following conditions are satisfied:

(a) the loss must arise from the carrying on of a trade, business, profession or vocation, ie sec 10(1)(a) source (therefore, any loss arising from non-sec 10(1)(a) sources are not eligible for deduction;

(b) it must also be of a nature that, if it had been a profit, would have been taxable; and

(c) the loss has not been allowed against statutory income of a prior year of assessment.

The deduction of loss follows the "preceding year" basis, ie deduction is allowed in the year or years subsequent to the year in which the loss was sustained. Thus, if a loss was incurred by a taxpayer in the year ended 31 December 2005, the loss will be relieved against the statutory income (including income from non-business sources such as employment, dividend, interest, rents, etc) for the year of assessment 2006.

Where the current year's loss cannot be fully relieved in the relevant year of assessment, the taxpayer has three options with regard to the unabsorbed current year's loss. These options are separately discussed below for companies and sole-proprietors and partners.

Companies

The options available to a company are:

(1) transfer the current year's loss to a claimant company under the loss transfer system of group relief (see ¶9-500);

(2) carry back the current year's loss for set-off against its assessable income of the immediate preceding year of assessment (see ¶9-700); or

(3) carry forward the current year's loss for set-off against future year's statutory income (sec 37(5)).

The loss can be carried forward indefinitely. However, it must be deducted in the first available year where there is statutory income (sec 37(4A)). There is no question of postponing the deduction of loss, either by the taxpayer or the Comptroller. The deduction is mandatory. Section 37(3)(a) provides that the unabsorbed losses of prior years of assessment have to be deducted first on a FIFO basis before the current year's business loss can be deducted.

Before the losses can be carried back to the immediate preceding year of assessment or be utilised in a future year of assessment, the Comptroller must be satisfied that there is no substantial change in the company's shareholders and their shareholdings at the relevant dates. This test applies to all companies, ie non-resident, resident, private or public.

¶9-300 Unabsorbed donations

The types of donations that qualify for deduction under sec 37(3) and the conditions are discussed in ¶7-900. Qualifying donations are deductible to the extent that they do not exceed the taxpayer's statutory income for the relevant year of assessment after the deduction of sec 10(1)(a) losses, if any (sec 37(7)). The current year's unabsorbed donations can be transferred or carried forward for up to five years for set-off against future chargeable income (sec 37(8)).

The rules on the transfer of donations are similar to those for unabsorbed capital allowances and losses. A company can transfer its current year's donations to another company within the same group, subject to certain conditions under the "loss transfer system of group relief" (see ¶9-700). An individual can transfer any unabsorbed donations to his or her spouse living with him or her (see ¶12-100).

With regard to the carry-forward of donations, a company has to satisfy that there is no substantial change in its shareholders and their shareholding before the excess donations can be carry forward for set-off against future year's income (sec 37(12)).

Note that there is no provision allowing the carry-back of unabsorbed donations.