Loss carry back

Correct as of 17 November 2020

All legislative references are to the *Income Tax Assessment Act 1997* unless otherwise stated

The loss carry back measure is contained in new Div 160 of the ITAA 1997

TABLE 1: Core rules

Rule	Explanation
Eligible losses	Revenue losses from the 2019–20, 2020–21 and 2021–22 income years only (capital losses not eligible)
Eligible taxed profits income years	2018–19, 2019–20 and 2020–21
Income year in which loss carry back tax offset can be claimed	2020–21 and 2021–22 (**‘the claim year’**) Offset can be claimed in the 2021 and the 2022 income tax return
Eligible entities	■ Corporate tax entities only[1] (companies, corporate limited partnerships and public trading trusts) ■ The entity must carry on a business[2] ■ The entity must have an aggregated turnover[3] of less than $5 billion
Choice to carry back loss	The entity can choose whether to carry back a loss and how much of the loss will be carried back
Tax return obligation	The entity must have lodged a tax return for the claim year and each of the 5 years immediately preceding it

1 See s 160-5(b) and s 960-115.
2 See s 160-20.
3 See s 328-115.

TABLE 2: Calculation of loss carry back tax offset

Step 1

Identify the losses from 2019–20, 2020–21 and 2021–22 that can be carried back against taxed profits from 2018–19 to 2020–21

Losses made in:

- 2019–20 or 2020–21 can be carried back to tax paid on profits from 2018–19 or 2019–20 — a claim is made in the 2021 income tax return
- 2021–22 can be carried back to tax paid on profits from 2018–19 to 2020–21 — a claim is made in the 2022 income tax return

Step 2

Reduce the loss to be carried back by net exempt income (if any)

Step 3

Loss carry back tax offset component — convert the loss to a tax equivalent amount (multiply by the corporate tax rate for the loss year)

- If the entity is a base rate entity in the loss year, and the loss year is:
  - 2019–20 — use **27.5%**
  - 2020–21 — use **26%**
  - 2021–22 — use **25%**
- If the entity is not a base rate entity in the loss year — use **30%**

Step 4

Determine the balance in the entity's franking account at the end of the claim year

Step 5

The amount of the refundable **loss carry back tax offset** is the lesser of the **Step 3** amount and the **Step 4** amount

Step 6

Any excess or unused **loss carry back tax offset component** is grossed up by the relevant corporate tax rate and may be carried forward under the normal rules

Notes

1. Any loss carried forward is subject to the normal continuity of ownership test or the same or similar business test.
2. Any loss carried back is subject to an integrity rule which applies where there has been a disposition of membership interests and a scheme is entered into or carried out for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the corporate tax entity to get a loss carry back tax offset.
3. The loss carry back tax offset is limited by the amount of tax paid in a previous income year, capped at the tax equivalent amount based on the corporate tax rate for the loss year and the balance in the franking account at the end of the claim year.

Further information

- Treasurer's media release 6 October 2020
- Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020