

**EXPOSURE DRAFT – FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA  
– MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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**INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI**

# Tax treatment of losses on amalgamation

Issued | Tukuna: Issue date

IS XX/XX

This interpretation statement provides guidance on when losses incurred before an amalgamation by an amalgamating company, an amalgamated company or another company that is within the group but not a party to the amalgamation, can be used after the amalgamation.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

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## Key terms | Kīanga tau tāpua

<p><b>Amalgamation</b></p>	<p>An amalgamation that occurs under Part 13 or 15 of the Companies Act 1993 (or under a foreign law that has the same or similar effect) that causes two or more companies to amalgamate and continue as one company.</p> <p>Includes certain transfers between building societies under s 33 of the Building Societies Act 1965.</p>
<p><b>Amalgamating company</b></p>	<p>A company that amalgamates with one or more other companies under an amalgamation. Generally, it includes both any company that ceases to exist after the amalgamation and the continuing company. However, in this statement, unless otherwise specified, <b>amalgamating company</b> means only the company that ceases to exist after an amalgamation.</p>
<p><b>Amalgamated company</b></p>	<p>The company that continues or survives after an amalgamation or a new company (ie, the continuing company).</p>
<p><b>Concessionary amalgamation</b></p>	<p>An amalgamation that is a “resident’s restricted amalgamation” (as defined in s FO 3 the Act) and receives concessionary tax treatment under subpart FO.</p>
<p><b>Non-concessionary amalgamation</b></p>	<p>An amalgamation either that does not meet the criteria for a concessionary amalgamation or that the companies elect not to treat as a concessionary amalgamation.</p>
<p><b>Amalgamation tax year</b></p>	<p>The tax year corresponding to the income year in which the amalgamation takes place.</p>
<p><b>Pre-amalgamation part year</b></p>	<p>In the income year in which the amalgamation takes place, the part of the</p>

	income year ending with the date of amalgamation.
<b>Post-amalgamation part year</b>	In the income year in which the amalgamation takes place, the part of the income year that begins on the day following the date of amalgamation.

## Summary | Whakarāpopoto

1. The general loss rules allow a company with a tax loss component to:
  - carry forward a tax loss to a subsequent tax year – where the company will use that loss to reduce its net income (if any) or add it to the tax loss for the subsequent tax year; or
  - share a tax loss with a company in a group of companies that has net income.
2. Special provisions (in subpart IE) apply to tax losses when companies amalgamate. This interpretation statement explains how the provisions in subpart IE apply to the tax losses of an amalgamated company, amalgamating company or a non-amalgamating group company, that arise **before** amalgamation.
3. The general tax loss rules apply to the tax losses of an amalgamated company or group company that arise **after** amalgamation.
4. The provisions in subpart IE are closely aligned with the general rules on the carry-forward and grouping of tax losses. This means that the amalgamation rules do not allow a company to:
  - carry forward losses that would otherwise be lost; or
  - share its tax losses with a company that it would not otherwise be able to.
5. Subpart IE applies to tax losses including amounts of attributed controlled foreign company (CFC) and foreign investment fund (FIF) net losses on amalgamation.
6. To determine whether an amalgamated company can use a tax loss following an amalgamation, it is important that it maintain records tracking any tax loss components arising before the amalgamation.
7. For a detailed discussion of how the general loss rules apply, including carrying forward losses and sharing losses, see [IS 22/07: Company losses – ownership continuity, sharing and measurement](#). Because this interpretation statement refers to several of the concepts discussed in IS 22/07, for ease of reference it summarises these concepts in the [appendix](#).

## Tax losses of an amalgamating company

### Concessionary amalgamation

8. On a concessionary amalgamation, an amalgamating company's tax losses survive the amalgamation and are inherited by the amalgamated company if:
  - the amalgamating company meets one of the continuity tests to the date of amalgamation; and
  - **all** of the following companies were at least 66% commonly owned (ie, have commonality) from the start of the income year that the tax loss component arose to the date of amalgamation:
    - the amalgamating company that incurred the tax loss;
    - the amalgamated company, unless it was only incorporated on amalgamation; and
    - any other company that amalgamated with the amalgamated company.
9. An amalgamated company can use a tax loss inherited from an amalgamating company after amalgamation if:
  - continuity is met for the continuity period; and
  - commonality is met for the commonality period where the inherited tax loss is shared with a group company after amalgamation.
10. For the purpose of determining if ownership continuity and commonality are met, the amalgamated company is treated for all times before the amalgamation as if it did not separately exist and was instead the amalgamating company, with the same shareholders and option holders.
11. An amalgamated company might undertake a subsequent amalgamation before it uses a tax loss inherited from an amalgamating company on an earlier amalgamation. In this situation, the amalgamated company can only use the inherited tax loss if all of the following companies have commonality for the commonality period:
  - the amalgamating company that incurred the tax loss that the amalgamated company inherited; and
  - any company that amalgamated with the amalgamated company before it used the inherited tax loss.

### Non-concessionary amalgamation

12. On a non-concessionary amalgamation, any tax losses of an amalgamating company that were not used before amalgamation are extinguished.

## Tax losses of an amalgamated company

13. The treatment of an amalgamated company's tax losses arising before amalgamation depends on whether they are used in the pre-amalgamation part year or the post-amalgamation part year.
14. In the income year in which the amalgamation takes place, the pre-amalgamation part year is the part of the income year that ends with the date of amalgamation. The post-amalgamation part year is the part of the income year that begins on the day following the date of amalgamation and ends on the last day of the income year.
15. An amalgamated company can use its tax losses arising before the date of amalgamation in the pre-amalgamation part year if it meets:
  - continuity for the continuity period; and
  - commonality for the commonality period where the amalgamated company shares the tax loss with a group company.
16. Tax losses of an amalgamated company arising before amalgamation can be carried forward past the date of amalgamation if, from the start of the income year that the tax loss component arose to the date of amalgamation, the following requirements are met:
  - the amalgamated company meets a continuity test; and
  - the amalgamated company and any company that amalgamated with the amalgamated company are at least 66% commonly owned.
17. The final requirement is modified for a tax loss component that is an attributed CFC net loss or a FIF net loss. In these cases, the amalgamated and amalgamating companies must be in a wholly owned group.

## Tax losses of a non-amalgamating group company arising before amalgamation shared with an amalgamated company

18. The commonality requirement is modified where a non-amalgamating group company wants to share tax losses that arose before the date of amalgamation with an amalgamated company.
19. The tax loss can only be shared with the amalgamated company if **all** of the following companies have commonality for the commonality period:
  - the group company that incurred the tax loss;
  - the amalgamated company; and
  - any company that amalgamated with the amalgamated company.

## Ordering

20. Tax loss components included in a tax loss must be used in the order that they arose.
21. An amalgamated company may have tax loss components for the same tax year. Where this occurs, the amalgamated company can elect the order in which it uses the losses. The amalgamated company should make this election when it files its income tax return. If the amalgamated company does not make an election, it will use the losses on a pro rata basis.

## Introduction | Whakataki

22. The general tax loss rules are modified where companies amalgamate. The modifications apply to:
  - tax losses of an amalgamating company;
  - tax losses of an amalgamated company that arise before the amalgamation; and
  - tax losses of a group company that is not a party to the amalgamation where those losses arise before the amalgamation and are to be shared with an amalgamated company.
23. The provisions in subpart IE are closely aligned with the general rules on the carry-forward and grouping of tax losses. This means the concepts that are important in the context of the general loss rules (eg, "tax loss", "tax loss component", continuity and commonality) are also important in the context of an amalgamation.

## Analysis | Tātari

24. This statement considers the provisions in subpart IE. Subpart IE applies to the tax losses of an amalgamated company, amalgamating company or non-amalgamating group company that arise **before** amalgamation.
25. Different rules apply depending on whether the tax losses are losses of an amalgamating company, an amalgamated company or a group company that is not a party to the amalgamation. For this reason, this statement considers the tax losses of amalgamating companies, amalgamated companies and non-amalgamating group companies separately.

## Tax losses of an amalgamating company

26. Where an amalgamating company has not used a tax loss before the date of amalgamation, the amalgamated company can use that tax loss after the amalgamation if the criteria in s IE 2 is met.
27. This section first considers when a tax loss of an amalgamating company is available to the amalgamated company (inherited). Second, it discusses when an amalgamated company can use an inherited tax loss after amalgamation.

## When an amalgamated company inherits the tax loss of an amalgamating company

28. An amalgamated company inherits the tax loss of an amalgamating company if the amalgamating company:
  - meets a continuity test;
  - ends its existence on a concessionary amalgamation;
  - has a tax loss for a tax year that it has not used before the date of amalgamation; and
  - has a tax loss that could be made available and subtracted from the net income for the pre-amalgamation part year of:
    - the amalgamated company, unless it was only incorporated on amalgamation; and
    - any company that amalgamated with the amalgamated company.
29. Each requirement is discussed further below. Additional considerations for an amalgamated company using a tax loss inherited from an amalgamating company are discussed from [45].

### Meets a continuity test

30. Section IE 2 applies only where an amalgamating company has a tax loss. An amalgamating company will only have a tax loss if it meets the ownership continuity test or the business continuity test. The appendix describes these tests from [A8].

### Ends its existence on a concessionary amalgamation

31. Section IE 2 applies only to an amalgamating company that ends its existence on a concessionary amalgamation. For a discussion of the requirements for an amalgamation to be a concessionary amalgamation, see IS XX/XX: **Income tax and GST – Amalgamations guidance** from [14] to [18]. This statement discusses the tax



treatment of an amalgamating company's tax losses on a non-concessionary amalgamation from [43].

### **Amalgamating company's tax loss has not been used before the date of amalgamation**

32. Where an amalgamating company has not used a tax loss before the date of amalgamation, the amalgamated company can inherit that tax loss.
33. An amalgamating company might use a tax loss before the date of amalgamation. A loss balance carried forward to a tax year must first be used to reduce the net income (if any) of the company for the tax year.<sup>1</sup> Example | Taura 1 illustrates an amalgamating company that uses some of its tax losses before the date of amalgamation.
34. An amalgamating company can use a tax loss in a few other ways. The main one is to share it with another company in the same group of companies. For information on this and the other ways of using a tax loss, see [43] in IS 22/07.

### **Able to share the tax loss with the amalgamated company and any other company that has amalgamated with the amalgamated company**

35. An amalgamating company's tax loss must be one that "could" be made available and subtracted from the net income for the pre-amalgamation part year of:
  - the amalgamated company, unless it was only incorporated on amalgamation;<sup>2</sup> and
  - any other company that amalgamated with the amalgamated company.<sup>3</sup>
36. The focus is on the ability of the amalgamating company to share its losses in a general sense. The amount of tax loss an amalgamated company inherits is not limited to the amount of net income of the amalgamated company (or any company that amalgamated with the amalgamated company) in the pre-amalgamation part year.
37. Generally, an amalgamating company's tax loss could be made available if, from the start of the income year when the tax loss component arose to the date of amalgamation,<sup>4</sup> the following requirements are met:

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<sup>1</sup> Section IA 4(1).

<sup>2</sup> Section IE 2(4).

<sup>3</sup> Section IE 2(3).

<sup>4</sup> Subject to the application of the part-year rules.

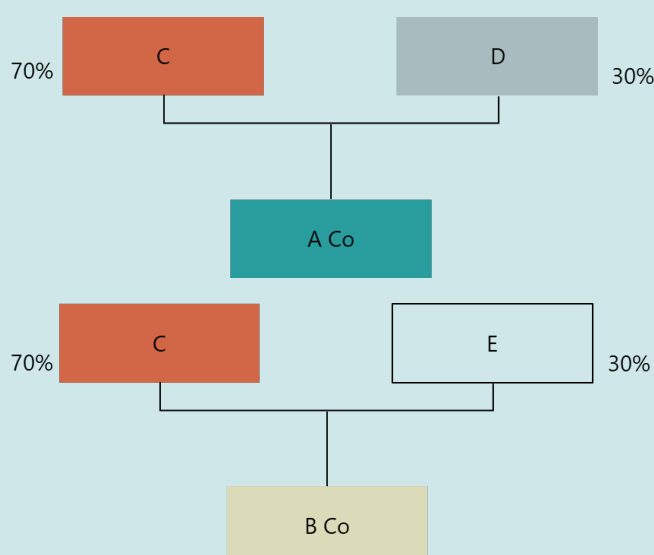
- the amalgamating company is either incorporated in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand;<sup>5</sup>
- the amalgamating company meets a continuity test; and
- **all** of the following companies are at least 66% commonly owned (ie, have commonality):<sup>6</sup>
  - the amalgamating company that incurred the tax loss;
  - the amalgamated company, unless it was only incorporated on amalgamation; and
  - any company that amalgamated with the amalgamated company.

38. Example | Taura 1 illustrates a situation where an amalgamated company inherits the tax loss of an amalgamating company because it has the required commonality of ownership with the amalgamating company. Example | Taura 2 illustrates a situation where an amalgamated company does not inherit the amalgamating company's tax loss because it does not have the required commonality of ownership with the amalgamating company.

#### Example | Taura 1 – Amalgamated company inherits amalgamating company's tax loss

A Co and B Co amalgamate on 31 March 2024. A Co is the amalgamated company.

The shareholdings of A Co and B Co have been the same since incorporation and are as follows:



<sup>5</sup> Sections IC 5(1)(b) and IC 7. For further information on this requirement, see [62] to [67] of IS 22/07.

<sup>6</sup> Sections IC 2, IE 2(1)(b) and IE 2(3).

B Co has a tax loss carried forward to its 2024 income year of \$100,000. The tax loss arose in B Co's 2023 income year.

B Co has net income in its 2024 income year of \$50,000.

### B Co's use of its tax loss before the date of amalgamation

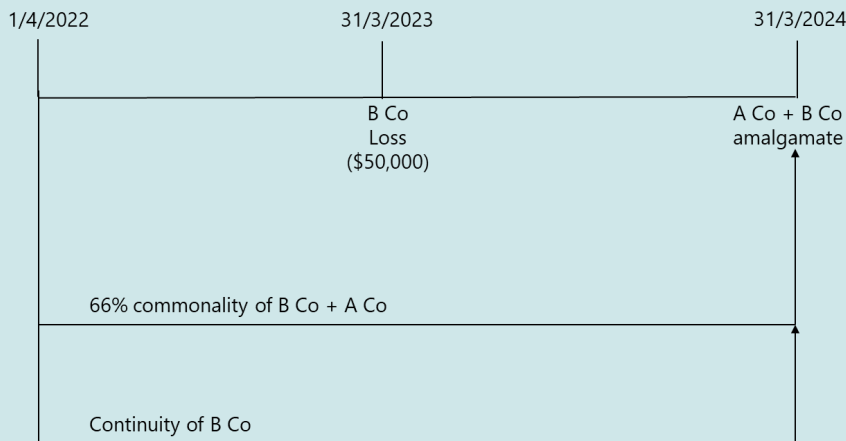
B Co meets a continuity test (ie, ownership continuity) from the start of the income year when the tax loss component arose (1 April 2022) to the end of the 2024 income year (31 March 2024).

B Co must use \$50,000 of the tax loss carried forward of \$100,000 to offset its net income in the 2024 income year.

### Inheriting tax loss

The tax loss of B Co that it does not use before the date of amalgamation is \$50,000.

A Co will inherit B Co's remaining tax loss balance of \$50,000 if B Co meets a continuity test and A Co and B Co are at least 66% commonly owned from the start of the income year when the tax loss component arose (1 April 2022) until the date of amalgamation (31 March 2024). The diagram below shows the continuity and commonality tests required to be met.



Based on the shareholdings of A Co and B Co above, A Co and B Co were at least 66% commonly owned (A Co and B Co were 70% commonly owned) and so A Co inherits B Co's tax loss of \$50,000.

Shareholder	A Co (1 April 2022 to 31 March 2024)	B Co (1 April 2022 to 31 March 2024)	Commonality of voting interests
C	70%	70%	70%

D	30%	0%	0%
E	0%	30%	0%
			70%

**Example | Taura 2 – Amalgamated company does not inherit the amalgamating company’s tax losses**

A Co and B Co amalgamate on 31 March 2024. A Co is the amalgamated company.

A Co acquired 100% of the shares in B Co on 1 April 2023.

Before 1 April 2023, the shareholdings of A Co and B Co were as follows:



At the date of amalgamation, B Co has tax losses of \$75,000. The tax losses arose in the 2022 income year and B Co carries them forward on the basis that it meets the business continuity test.

A Co and B Co are 100% commonly owned from 1 April 2023 to the date of amalgamation. However, based on the shareholdings above, A Co and B Co were not at least 66% commonly owned from the start of the income year when the tax loss component arose (1 April 2021) until 31 March 2023 (A Co and B Co had no common ownership). It follows that A Co does not inherit B Co’s tax loss on amalgamation.

Shareholder	A Co (1 April 2021 to 31 March 2023)	B Co (1 April 2021 to 31 March 2023)	Commonality of voting interests
C	100%	0%	0%
D	0%	100%	0%
			0%

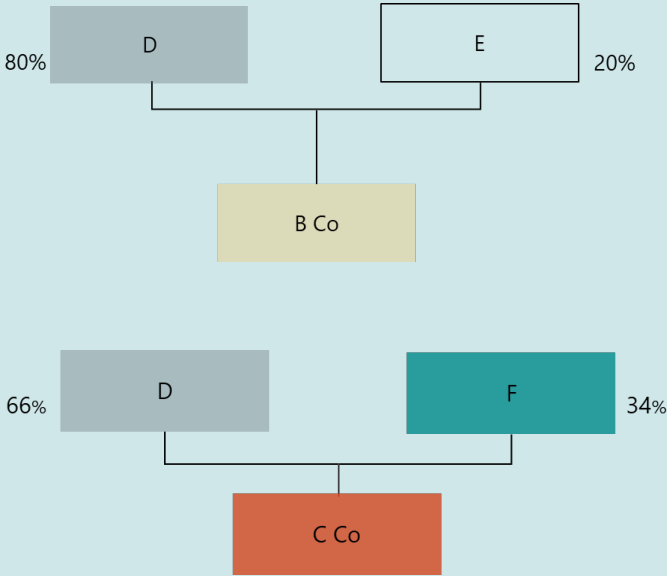
- 39. An amalgamated company that is incorporated only on amalgamation does not need to have commonality with the amalgamating company that incurred the tax loss.

However, if the amalgamation involves more than one amalgamating company, the amalgamating company that incurred the loss must have commonality with the other company or companies that amalgamated with the amalgamated company. Example | Taura 3 illustrates an amalgamation where the amalgamated company is incorporated only on amalgamation.

**Example | Taura 3 – Amalgamating company’s tax losses inherited by an amalgamated company that is incorporated only on amalgamation**

B Co and C Co amalgamate on 31 March 2024. The amalgamated company (A Co) is a new company incorporated on amalgamation.

The shareholdings of B Co and C Co have been the same since incorporation and are as follows:



At the date of amalgamation, B Co has tax losses of \$10,000. The tax losses arose in B Co’s 2022 income year.

Based on the shareholdings of B Co and C Co above, B Co and C Co were at least 66% commonly owned (B Co and C Co were 66% commonly owned) from the start of the income year that the tax loss component arose (1 April 2021) until the date of amalgamation (31 March 2024). Accordingly, A Co inherits B Co’s tax loss of \$10,000.

Shareholder	B Co (1 April 2021 to 31 March 2024)	C Co (1 April 2021 to 31 March 2024)	Commonality of voting interests
D	80%	66%	66%
E	20%	0%	0%

F	0%	34%	0%
			66%

40. Sometimes an amalgamated company undertakes multiple separate amalgamations. In this case, the requirements go beyond the 66% commonality of ownership between the amalgamating company and amalgamated company described at [37]. Specifically, there must also be 66% commonality of ownership between the amalgamating company that incurred the loss and any other company that amalgamated with the amalgamated company before or on the date of amalgamation.
41. Example | Taura 4 illustrates the continuity and commonality tests that must be met for an amalgamated company to inherit the tax loss of an amalgamating company where the amalgamated company has undertaken multiple amalgamations.

**Example | Taura 4 – Inheriting an amalgamating company’s tax loss when the amalgamated company has undertaken multiple amalgamations**

A Co and B Co amalgamate on 31 March 2024. A Co is the amalgamated company.

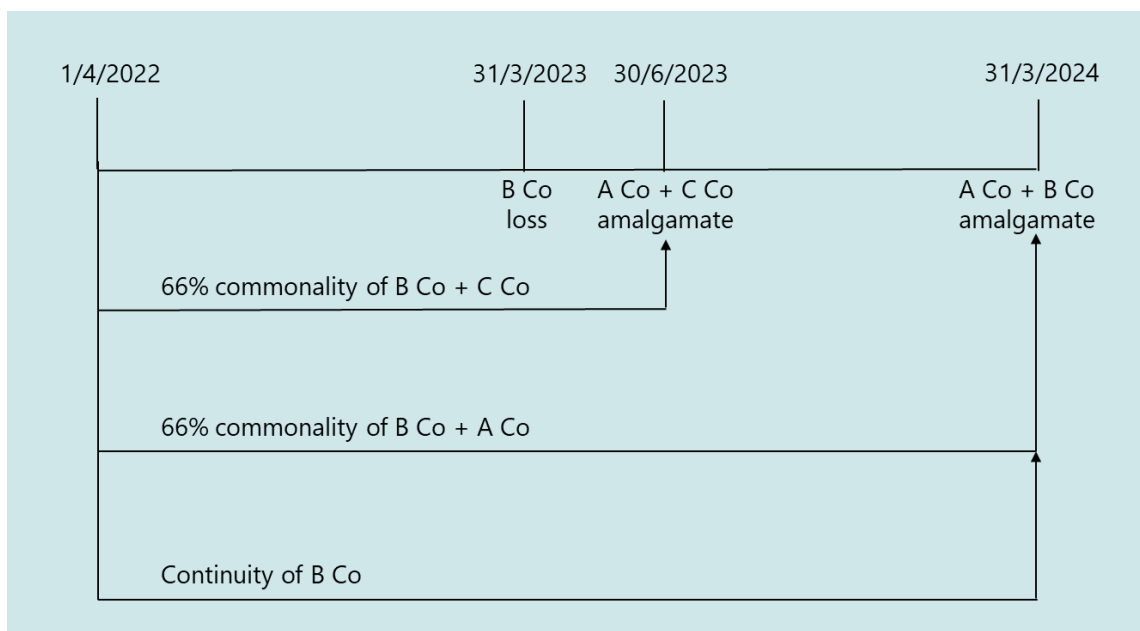
B Co has a tax loss than arose in the year ended 31 March 2023. A Co wants to know if it will inherit B Co’s tax loss.

A Co will inherit B Co’s tax loss if from the start of the income year that the tax loss component arose (1 April 2022) to the date of amalgamation (31 March 2024):

- B Co meets a continuity test; and
- A Co, B Co and any other company A Co amalgamated with are at least 66% commonly owned.

A Co undertook an earlier amalgamation. A Co amalgamated with C Co on 30 June 2023. A Co was the amalgamated company. It follows that A Co, B Co and C Co must be at least 66% commonly owned in the period from 1 April 2022 to 31 March 2024 if A Co is to inherit B Co’s tax loss.

The diagram below shows the continuity and commonality tests required to be met.



42. Sometimes the continuity or commonality test will be satisfied for part of an income year only (as opposed to from the start of the income year when the loss component arose). The outcome is that the amalgamated company might inherit some but not all of the amalgamating company's tax losses. Example | Taura 5 illustrates a situation where an amalgamating company and amalgamated company have commonality for part of an income year only.

#### Example | Taura 5 – Commonality met part-way through an income year

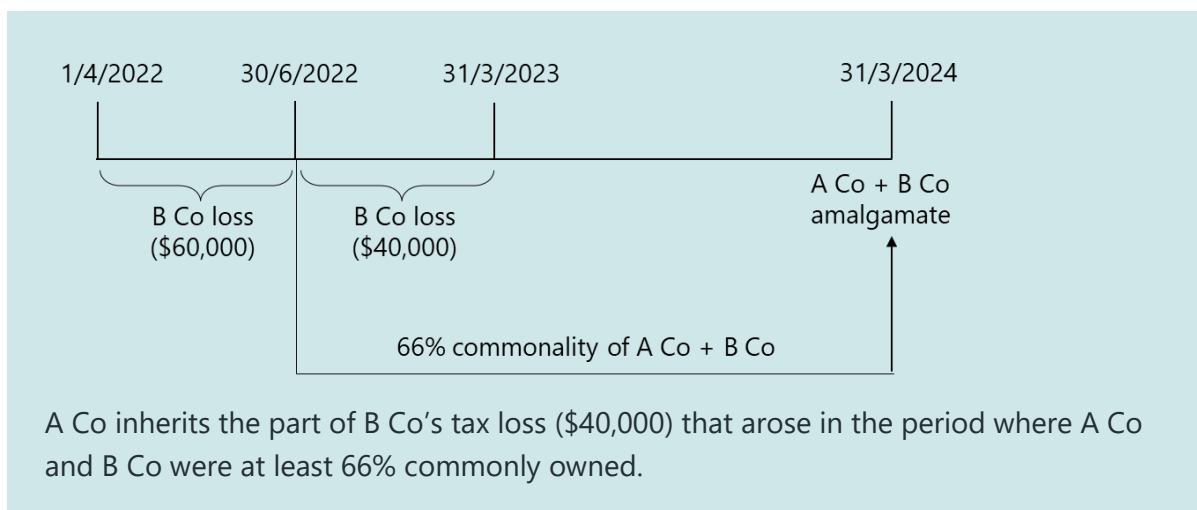
A Co and B Co amalgamate on 31 March 2024. A Co is the amalgamated company.

At the date of amalgamation, B Co had unused tax losses carried forward from the 2023 income year of \$100,000.

Since incorporation, C has had 100% ownership of A Co.

From the date of incorporation to 30 June 2022, C held 50% of the shares in B Co and D held the other 50%. On 30 June 2022, C increased their shareholding in B Co to 70%. That is, A Co and B Co were at least 66% commonly owned from 30 June 2022.

B Co determines that \$40,000 of its net loss of \$100,000 arose in the part of the year when A Co and B Co were commonly owned (ie, from 30 June 2022 to 31 March 2023).



### ***Non-concessionary amalgamation***

- 43. As discussed at [28], one of the requirements that must be met for an amalgamated company to inherit an amalgamating company's tax loss is that the amalgamating company ends its existence on a concessionary amalgamation.
- 44. The tax losses of an amalgamating company on a non-concessionary amalgamation are extinguished. Example | Taura 6 illustrates what happens to the tax losses of an amalgamating company on a non-concessionary amalgamation.

### **Example | Taura 6 – Extinguishment of an amalgamating company's tax loss on a non-concessionary amalgamation**

A Co and B Co amalgamate on 30 June 2024. A Co is the amalgamated company.

The companies notify the Commissioner of their decision to treat the amalgamation as a non-concessionary amalgamation.

B Co incurs a tax loss of \$2,000 in its 2024 income year that it cannot use before the date of amalgamation. A Co does not inherit B Co's tax loss of \$2,000 because the amalgamation is a non-concessionary amalgamation.

### **Amalgamated company using an inherited tax loss**

- 45. The general tax loss rules set out how a company can use a tax loss. They contain specific rules and concessions on measuring the continuity of ownership (eg, notional single person).



46. Section IE 2 modifies how these rules apply where an amalgamated company inherited the tax loss from an amalgamating company on a concessionary amalgamation.<sup>7</sup>
47. To determine whether an amalgamated company meets the ownership continuity and commonality tests so that it can use the tax loss, or the tax loss can be subtracted from the net income of a group company after amalgamation, the amalgamated company is treated for all times before the amalgamation as if it did not separately exist and was instead the amalgamating company, with the same shareholders and option holders.
48. The following paragraphs set out how s IE 2 applies in each situation and include examples.

### **Continuity test**

49. Generally, an amalgamated company can use an inherited tax loss if it meets a continuity test from the start of the income year that the tax loss component arose until the end of the income year in which it is to use the loss.<sup>8</sup> Where the inherited tax loss was carried forward by the amalgamating company under the business continuity test, the amalgamated company must also meet the business continuity test. This statement does not consider the business continuity test requirements. For guidance on the main aspects of the business continuity test, see [IS 22/06: Loss carry-forward – continuity of business activities](#).
50. For the purposes of the Act the amalgamated company is treated for all times before the amalgamation as if it did not separately exist and was instead the amalgamating companies, with the same shareholders and option holders. This means that from the start of the income year when the tax loss component arose to the date of amalgamation, ownership continuity is considered based on the shareholding of the amalgamating company. From the date of amalgamation to the end of the income year in which the loss is used, ownership continuity is considered in relation to the shareholding of the amalgamated company.
51. Example | Tauira 7 illustrates how the ownership continuity test applies to an amalgamated company wanting to use a tax loss it inherits from an amalgamating company to offset net income arising after amalgamation.
52. If an amalgamated company inherits tax losses of one or more amalgamating companies, the losses of each amalgamating company need to be tracked separately to determine if the amalgamated company meets the continuity requirement for the relevant continuity period.

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<sup>7</sup> See ss IE 2(2) and IE 5.

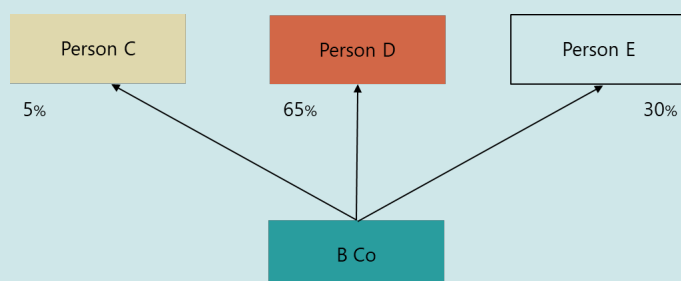
<sup>8</sup> Subject to application of the part-year rules.

## Example | Taurira 7 – Ownership continuity of amalgamated company after an amalgamation

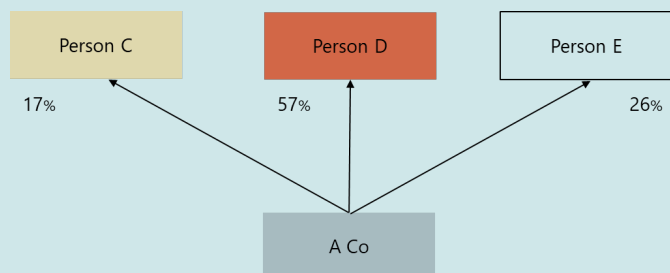
A Co and B Co amalgamate on 31 March 2023. A Co is the amalgamated company. B Co incurred a \$50,000 loss in the 2022 income year that it carried forward to the 2023 income year.

The commonality of ownership test was met at the date of amalgamation and A Co inherited the tax loss of B Co. A Co now wishes to use the tax loss to offset its net income derived in the 2024 income year.

The shareholding of B Co from the start of the income year in which the loss arose (1 April 2021) to the date of amalgamation remained the same.



The shareholding of A Co from the date of amalgamation to the end of the 2024 income year (31 March 2024) has remained the same.



A Co can use the tax loss inherited from B Co if it meets a continuity test from the start of the income year in which the loss arose (1 April 2021) to the date when it will use the loss (31 March 2024).

To determine ownership continuity, A Co is treated as if it had B Co's shareholders before the amalgamation and its own shareholders after the amalgamation.

Shareholder	1 April 2021 to 31 March 2023	1 April 2023 to 31 March 2024	Continuity of voting interest
C	5%	17%	5%

D	65%	57%	57%
E	30%	26%	26%
			88%

Because ownership continuity is maintained, A Co:

- does not need to consider the business continuity test; and
- can use the tax loss inherited from B Co to offset its net income in the 2024 income year.

### Notional single person

53. Sometimes the shareholding of an amalgamating company and an amalgamated company includes ownership interests of less than 10% in a company that are treated as held by a “notional single person”.<sup>9</sup> The notional single person rule allows smaller ownership interests to be tracked together as a group. It applies where a person:
- has a direct ownership interest in a company of less than 10%; and
  - is not a company that is associated with the subject company.
54. For further information on the notional single person rule, see [165] to [178] of IS 22/07.
55. If the shareholdings of an amalgamating company and an amalgamated company each include a notional single person, the notional single person in the amalgamating company and the notional single person in the amalgamated company are treated as the same person after the amalgamation when calculating ownership continuity.<sup>10</sup> Example | Taura 8 illustrates how this works.

### Example | Taura 8 – Ownership continuity where the amalgamating company and amalgamated company have a notional single person

A Co and B Co amalgamate on 31 March 2024. A Co is the amalgamated company.

A Co and B Co both have several shareholders who each hold an ownership interest of less than 10% in the company. The company treats them as a notional single person.

The shareholdings of A Co and B Co are as follows:

<sup>9</sup> Section YC 10.

<sup>10</sup> The notional single person rule does not apply when determining if commonality is satisfied.

Shareholder	B Co (to 31 March 2024)	A Co (on 1 April 2024)	Continuity of voting interest
C	15%	45%	15%
D	45%	20%	20%
Notional single person	40%	35%	35%
			70%

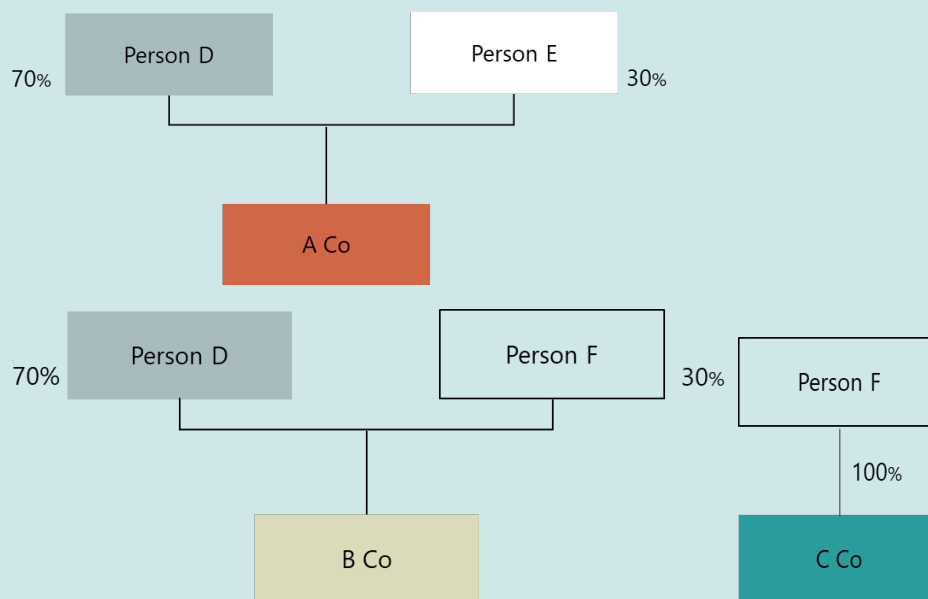
### Subsequent amalgamations

56. An amalgamated company might undertake a subsequent amalgamation before it uses a tax loss it inherited from an amalgamating company on an earlier amalgamation.
57. In this situation, an amalgamated company can only use the inherited tax loss if all the following companies are at least 66% commonly owned for the commonality period:
- the amalgamating company that incurred the tax loss inherited by the amalgamated company; and
  - any company that amalgamated with the amalgamated company before the amalgamated company can use the inherited tax loss.
58. Example | Taura 9 illustrates a situation where an amalgamated company is unable to use an inherited tax loss because the amalgamating company that incurred the tax loss did not have the required commonality with a company that amalgamated with the amalgamated company before it was to use the loss.

### Example | Taura 9 – Where an amalgamated company cannot use an inherited tax loss following a subsequent amalgamation

A Co and B Co amalgamate on 1 April 2022. A Co amalgamates with C Co on 1 September 2022. A Co is the amalgamated company in each amalgamation.

The shareholdings of A Co, B Co and C Co remained unchanged since incorporation and are as follows:



B Co incurred a loss in the year ended 31 March 2021 that A Co inherited on amalgamation on the basis that:

- B Co met the ownership continuity test; and
- A Co and B Co were at least 66% commonly owned from the start of the income year when the tax loss arose until the amalgamation date.

A Co derives net income in the 2024 income year.

A Co cannot use the tax loss it inherited from B Co on amalgamation to offset against its net income in the 2024 income year. Based on the shareholdings of B Co and C Co above, B Co and C Co were not at least 66% commonly owned from the start of the income year in which the loss arose (1 April 2020) to the amalgamation date (1 September 2022). B Co and C Co were only 30% commonly owned.

Shareholder	B Co (1 April 2020 to 1 September 2022)	C Co (1 April 2020 to 1 September 2022)	Commonality of voting interests
D	70%	0%	0%
E	0%	0%	0%
F	30%	100%	30%
			30%

## Sharing an amalgamated company's inherited loss with a group company after amalgamation

59. Under the general tax loss rules, a loss company<sup>11</sup> can share a tax loss with a profit company if:
- the loss company is either incorporated in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand;<sup>12</sup>
  - notification and payment requirements are met;<sup>13</sup>
  - the loss company meets a continuity requirement;<sup>14</sup> and
  - the profit company and the loss company meet ownership commonality requirements.<sup>15</sup>
60. For a detailed discussion of the requirements under the general tax loss rules that companies need to meet in order to share losses, see [60] to [113] of IS 22/07.
61. To determine if the required commonality of ownership is met where the loss company is an amalgamated company and the tax loss being shared is an inherited tax loss, the amalgamated company is treated in respect of the inherited loss as if it had the amalgamating company's shareholders before the date of amalgamation and its own shareholders from the date of amalgamation. Example | Taura 10 illustrates how this works.

### Example | Taura 10 – Amalgamated company offsetting inherited tax loss against net income of a company that was not involved in the amalgamation

In Example | Taura 7 A Co amalgamated with B Co on 31 March 2023.

A Co (the amalgamated company) inherited B Co's tax loss on amalgamation and used the tax loss to offset its net income derived in the 2024 income year.

Assume that A Co from Example | Taura 7 had no net income in the 2024 income year and instead seeks to offset the tax loss inherited from B Co against C Co's net income (a non-amalgamation group company) in the 2024 income year.

The shareholding of C Co has not changed since it was incorporated and is as follows

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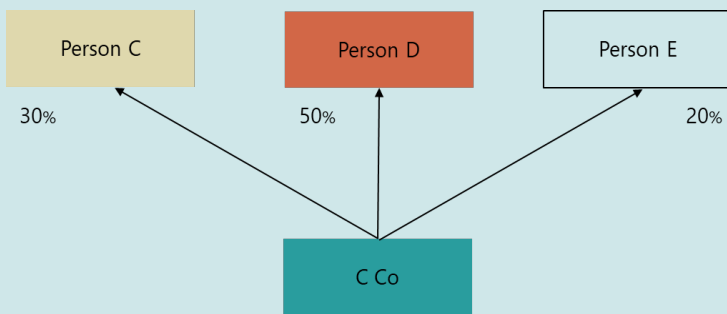
<sup>11</sup> For the purpose of this statement the terms "loss company" means a company that has a tax loss component that it can use, and "profit company" means a company that has net income.

<sup>12</sup> Sections IC 5(1)(b) and IC 7. For further information on this requirement, see [62] to [67] of IS 22/07.

<sup>13</sup> See ss IC 8 and IC 9.

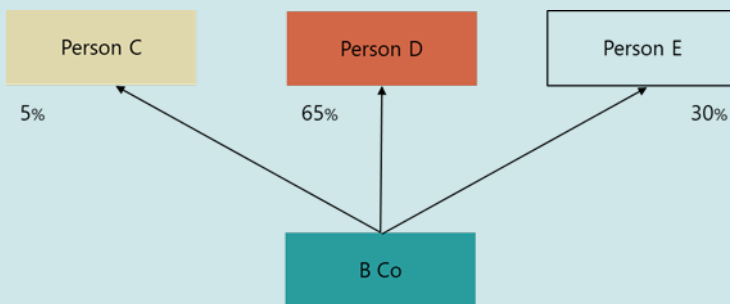
<sup>14</sup> See s IC 2(1).

<sup>15</sup> See s IC 2(2).



For A Co to offset the losses it inherited from B Co against net income of C Co arising after the date of amalgamation, A Co and C Co must be at least 66% commonly owned from the start of the income year in which the loss arose (1 April 2021) until the end of C Co's 2024 income year (31 March 2024).

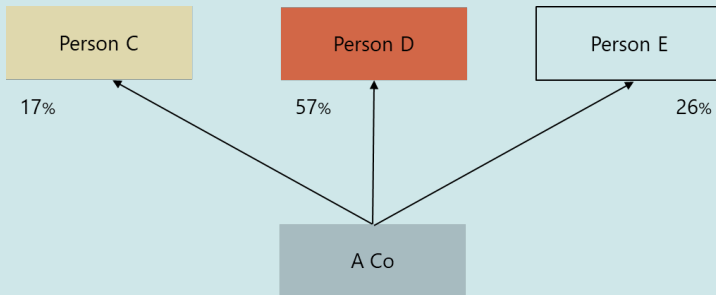
In measuring the commonality of shareholding between A Co and C Co to the date of amalgamation, A Co's shareholding is based on the shareholding of B Co. As discussed at Example | Taura 7, the shareholding of B Co from the start of the income year in which the loss arose (1 April 2021) to the date of amalgamation is as follows:



Shareholder	B Co (1 April 2021 to 31 March 2023)	C Co (1 April 2021 to 31 March 2023)	Commonality of voting interest
C	5%	30%	5%
D	65%	50%	50%
E	30%	20%	20%
			75%

As B Co and C Co meet the commonality test from the start of the income year in which B Co incurred the loss to the date of amalgamation, the commonality test must next be applied to the shareholding of A Co after the amalgamation.

As discussed at Example | Taura 7 above, the shareholding of A Co from the date of amalgamation to the end of the 2024 income year (31 March 2024) is as follows:



Shareholder	A Co (1 April 2023 to 31 March 2024)	C Co (1 April 2023 to 31 March 2024)	Commonality of voting interest
C	17%	30%	17%
D	57%	50%	50%
E	26%	20%	20%
			87%

As the commonality test is met before and after amalgamation, A Co can offset the net income of C Co against the losses A Co inherited from B Co on amalgamation.

## Tax losses of an amalgamated company

62. Section IE 3 applies to an amalgamated company in relation to either or both of the following (referred to in this item as the pre-amalgamation loss):
  - a tax loss balance carried forward to the year of amalgamation for which a continuity test is met up to the date of amalgamation; and/or
  - the part of the net loss in the amalgamation tax year that relates to the pre-amalgamation part year.
63. Tax losses of an amalgamated company arising **after** amalgamation are considered under the general tax loss rules.
64. This section applies to the tax losses of an amalgamated company on a concessionary amalgamation and a non-concessionary amalgamation.



## **Pre-amalgamation part year and post-amalgamation part year**

65. For the purposes of s IE 3 only, the year of amalgamation is treated as two separate tax years. The pre-amalgamation part year is the part of the income year that ends with the date of amalgamation. The post-amalgamation part year is the part of the income year that begins on the day following the date of amalgamation and ends on the last day of the income year. For example, an amalgamated company has a standard balance date (31 March) and amalgamates on 30 June 2023. The pre-amalgamation part year is the period that starts on 1 April 2023 and ends on 30 June 2023. The post-amalgamation part year is the period that starts on 1 July 2023 and ends on 31 March 2024.
66. Sometimes an amalgamation will take place at the end of the income year such that the pre-amalgamation part year is the entire income year. For example, an amalgamated company has a standard balance date (31 March) and amalgamates on 31 March 2024. The pre-amalgamation part year is the period that starts on 1 April 2023 and ends on 31 March 2024.
67. How section IE 3 applies to the pre-amalgamation part year and post-amalgamation part year is discussed further from [69].
68. Treating the year of amalgamation as two separate years for the purposes of s IE 3 does not mean that the amalgamated company needs to file two separate income tax returns for the year of amalgamation. An amalgamated company continues to calculate its taxable income in the year of amalgamation in accordance with subpart BC (of the core provisions in Part B).

## **Pre-amalgamation tax losses used or made available in the pre-amalgamation part year (s IE 3(2))**

69. An amalgamated company that has net income in the year of amalgamation may have a tax loss balance carried forward to the year of amalgamation. In this situation where the amalgamated company meets a continuity test up to the date of amalgamation, the tax loss must first be subtracted from the part of the net income that relates to the pre-amalgamation part year.<sup>16</sup> Example | Tauira 14 illustrates a situation where an amalgamated company uses part of its pre-amalgamation losses in the pre-amalgamation part year.
70. The amalgamated company may make any unused tax loss balance available to a group company for subtraction from the part of the group company's net income in

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<sup>16</sup> See ss IE 3(2) and IA 4(1).

the amalgamation tax year that relates to the pre-amalgamation part year. This applies provided the commonality test under the general loss grouping rules is met.<sup>17</sup>

71. Similarly, if the amalgamated company has a net loss in the year of amalgamation, it may share the part of the net loss that relates to the pre-amalgamation part year with a group company and subtract it from the part of the group company's net income in the amalgamation tax year that relates to the pre-amalgamation part year. This applies provided the commonality test under the general loss grouping rules is met.

### **Pre-amalgamation tax losses used or made available after amalgamation (s IE 3(3))**

72. A pre-amalgamation loss of an amalgamated company not used or made available in the pre-amalgamation part year may only be carried forward past the date of amalgamation (to the post-amalgamation part year), if both of the following requirements are met:
- the amalgamated company meets a continuity test from the start of the income year in which the loss arose to the date of amalgamation; and
  - the pre-amalgamation loss could have been made available to an amalgamating company and subtracted from its net income calculated for the pre-amalgamation part year.
73. As discussed at [36], the second requirement is focused on the ability of an amalgamated company to share its pre-amalgamation losses with the amalgamating companies in a general sense. It follows that the amalgamating company is not required to have net income for the pre-amalgamation part year against which it could, in fact, have offset the amalgamated company's pre-amalgamation loss.
74. An amalgamated company could make its tax loss available to an amalgamating company to offset against its net income for the pre-amalgamation part year if, from the start of the income year that the tax loss component arose to the date of amalgamation, the following requirements are met:
- the amalgamated company is either incorporated in New Zealand or carrying on a business in New Zealand through a fixed establishment in New Zealand;<sup>18</sup>
  - the amalgamated company meets a continuity test; and
  - the amalgamated company and any company that amalgamated with it are at least 66% commonly owned.

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<sup>17</sup> See s IE 3(2).

<sup>18</sup> Sections IC 5(1)(b) and IC 7. For further information on this requirement, see [62] to [67] of IS 22/07.

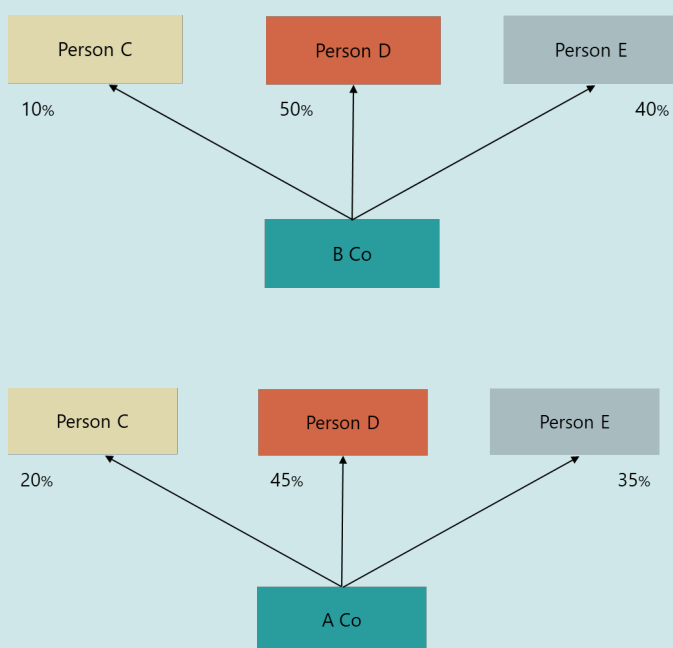
- 75. The final requirement is modified for a tax loss component that is an attributed controlled foreign company (CFC) net loss or a foreign investment fund (FIF) net loss. In these cases, the amalgamated and amalgamating companies must be in a wholly owned group.
- 76. Example | Tauira 11 Example | Tauira 11 illustrates a situation where an amalgamated company is able to use a pre-amalgamation tax loss to offset net income arising after the amalgamation because the amalgamated company and amalgamating company were at least 66% commonly owned. Example | Tauira 12 discusses a situation where the amalgamated company's pre-amalgamation losses carried forward under the business continuity test are sought to be used after the amalgamation. Example | Tauira 13 illustrates a situation where an amalgamated company cannot use a pre-amalgamation tax loss to offset net income arising after the amalgamation because the amalgamated and amalgamating companies were not at least 66% commonly owned when the pre-amalgamation tax loss arose. Example | Tauira 14 illustrates the different tests that apply to pre-amalgamation tax losses used before and after amalgamation.

**Example | Tauira 11 – Amalgamated company using its pre-amalgamation tax loss to offset net income arising after the amalgamation**

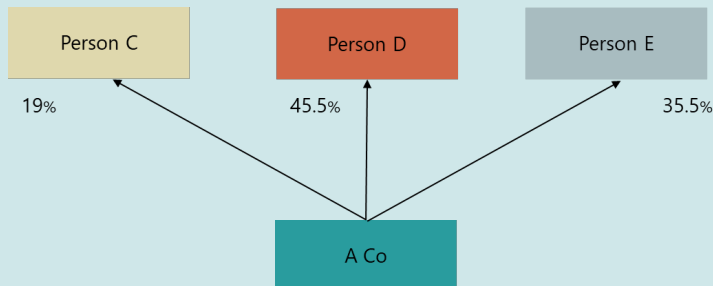
A Co and B Co amalgamate on 31 March 2023. A Co is the amalgamated company.

A Co incurred a loss of \$30,000 in the year ended 31 March 2022 and derived net income in the year ended 31 March 2024 of \$40,000.

Prior to the amalgamation the shareholdings of each company (unchanged since incorporation) were as follows:



After the amalgamation, the shareholding in A Co is as follows



A Co can offset its tax loss that arose before the amalgamation (the 2022 income year) against its net income arising after the amalgamation (the 2024 income year) if the continuity and commonality tests are met.

### Continuity of shareholding

Based on the shareholdings above, A Co meets the ownership continuity test from the start of the income year in which the loss arose (1 April 2021) to the date the loss is used (31 March 2024).

Shareholder	A Co (1 April 2021)	A Co (31 March 2024)	Continuity of voting interest
C	20%	19%	19%
D	45%	45.5%	45%
E	35%	35.5%	35%
			99%

### Commonality of shareholding

Based on the shareholdings above, A Co and B Co were at least 66% commonly owned from the beginning of the year in which the loss arose until the date of amalgamation (A Co and B Co were 90% commonly owned). Accordingly, A Co can offset its pre-amalgamation tax loss against its net income in the 2024 income year.

Shareholder	B Co (1 April 2021 to 31 March 2023)	A Co (1 April 2021 to 31 March 2023)	Commonality of voting interest
C	10%	20%	10%
D	50%	45%	45%
E	40%	35%	35%

			90%
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**Example | Taura 12 – Amalgamated company’s pre-amalgamation losses carried forward under the business continuity test are sought to be used after the amalgamation**

A Co and B Co (both New Zealand resident companies) have had common ownership since they were incorporated.

A Co incurred a \$10,000 loss in its 2022 income year that it carried forward to its 2024 income year based on the business continuity test (following a 100% change in the shareholding of both A Co and B Co on 31 March 2022).

A Co and B Co amalgamate on 31 March 2023. A Co is the amalgamated company.

A Co seeks to offset the \$10,000 loss against its net income arising in the 2024 income year.

Under s IE 3, A Co can carry forward its 2022 losses past the date of amalgamation on the basis that:

- it meets a continuity test from the start of the income year in which the loss arose to the date of amalgamation; and
- the pre-amalgamation loss of \$10,000 could have been made available to B Co and subtracted from its net income in the year of amalgamation (as A Co and B Co were at least 66% commonly owned from the start of the income year in which the loss arose (1 April 2021) to the date of amalgamation (31 March 2023)).

A Co can use its 2022 tax loss to offset its net income arising in the 2024 income year if it continues to satisfy the business continuity test under subpart IB.

In this case as A Co and B Co are both New Zealand resident companies and were part of the same group of companies immediately before and immediately after the ownership continuity breach (on 31 March 2022), A Co and B Co are treated as a single company for the purposes of applying subpart IB 3. It follows that the amalgamation of A Co and B Co should not itself result in a major change to the business of A Co.

**Example | Taura 13 – Amalgamated company cannot use pre-amalgamation tax losses following an amalgamation with a subsidiary that was incorporated after the tax loss components arose**

A Co amalgamates with its wholly owned subsidiary B Co on 31 March 2023. A Co is the amalgamated company.

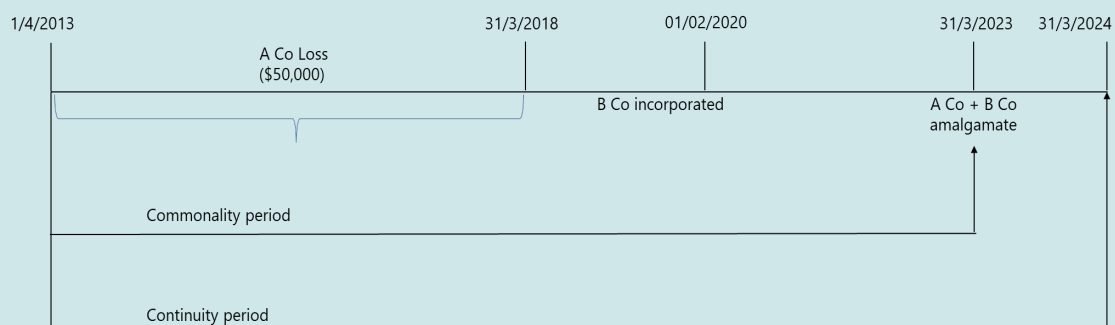
A Co has had the same shareholding since incorporation.

At the end of its 2023 income year (31 March 2023), A Co has a tax loss balance of \$50,000. The losses arose in the 2014 to 2018 income years.

B Co was incorporated during the 2020 income year (1 February 2020) for the purpose of protecting a name for a business opportunity that A Co was considering. The business never eventuated, and A Co decided to amalgamate with B Co as part of tidying its corporate structure.

A Co has net income in its 2024 income year that it wants to offset against its losses of \$50,000.

It can offset its net income arising after the amalgamation if the continuity and commonality tests illustrated below are met.



A Co cannot use its pre-amalgamation losses after the amalgamation with B Co as A Co and B Co were not commonly owned at the time that A Co's losses arose. B Co was not incorporated until after A Co's losses arose.

**Example | Taura 14 – Pre-amalgamation losses used before and after amalgamation**

A Co and B Co (both of which have a 31 March balance date) amalgamate on 30 June 2023. A Co is the amalgamated company.

The shareholding of A Co has remained unchanged since incorporation. A Co and B Co were 100% commonly owned from 1 April 2022. Prior to this date A Co owned 30% of B Co's shares.

A Co derives net income in the year of amalgamation (year ended 31 March 2024) of \$35,000. A Co is working out if its pre-amalgamation losses can be offset against its net income in the year of amalgamation.

A Co's loss balances are as follows:

Year ending	31 March 2021	31 March 2022	31 March 2023
A Co			
Tax loss component by year	(\$10,000)	(\$5,000)	(\$20,000)
Loss balance at year end	(\$10,000)	(\$15,000)	(\$35,000)

In the year of amalgamation, A Co's net income in the pre-amalgamation part year and post-amalgamation part year is as follows:

	Pre-amalgamation net income	Post-amalgamation net income	Net income for 2024 income year
A Co	\$10,000	\$25,000	\$35,000

A Co's pre-amalgamation losses can be used to offset the net income arising in the pre-amalgamation part year (treating the pre-amalgamation part year as if it were a separate tax year) if a continuity test is met.

As ownership continuity is met A Co can offset its pre-amalgamation loss against its net income in the pre-amalgamation part year of (as shown in the table above, \$10,000).

A Co's earliest tax loss is from the 2021 income year. The tax loss component in the 2021 income year happens to equal the amount of the A Co's net income in the pre-amalgamation part year of \$10,000, so is fully used.

A Co's remaining pre-amalgamation loss is as follows:

Year ending	31 March 2021	31 March 2022	31 March 2023
A Co			
Loss balance at year end	(\$10,000)	(\$5,000)	(\$25,000)

Use of tax losses prior to amalgamation	\$10,000	-	-
Remaining tax loss	-	(5,000)	(\$25,000)

The balance of A Co's pre-amalgamation losses can only be used after amalgamation if the pre-amalgamation losses could have been subtracted from B Co's net income calculated for the pre-amalgamation part year. As A Co and B Co were only at least 66% commonly owned from 1 April 2022 (the start of the 2023 income year), A Co's tax loss component arising in the 2022 income year (\$5,000) cannot be used by A Co to offset its net income, or net income of a group company, after the amalgamation.

As A Co and B Co meet the commonality test in relation to A Co's tax loss component arising in the 2023 income year (\$20,000), those losses can be used to offset (in part) A Co's net income arising in the post-amalgamation part year (\$25,000).

## Sharing a non-amalgamating group company's loss arising in the pre-amalgamation part year with an amalgamated company after amalgamation

77. The general tax rules as to when a loss company can share a tax loss with a profit company are discussed at [59].<sup>19</sup> A further requirement must be met where a non-amalgamating group company wants to share tax losses that arose before the date of amalgamation with an amalgamated company after amalgamation.
78. The tax loss can only be shared with the amalgamated company if **all** of the following companies have commonality for the commonality period:<sup>20</sup>
- the group company that incurred the tax loss;
  - the amalgamated company; and
  - any company that amalgamated with the amalgamated company.

<sup>19</sup> Different rules apply where the tax loss component is an attributed CFC net loss or a FIF net loss (see s IQ 4).

<sup>20</sup> Where the tax loss component is an attributed CFC net loss or a FIF net loss, the requirements in s IQ 4 must be met. This includes the requirement that the group of companies are in a wholly owned group of companies.

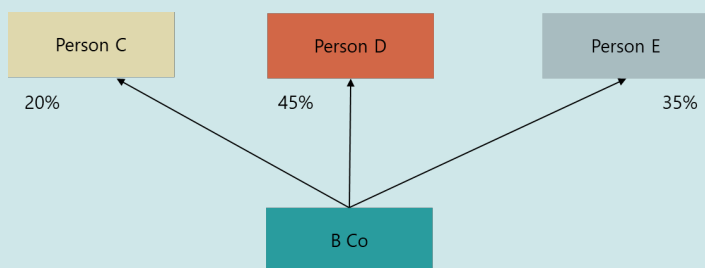
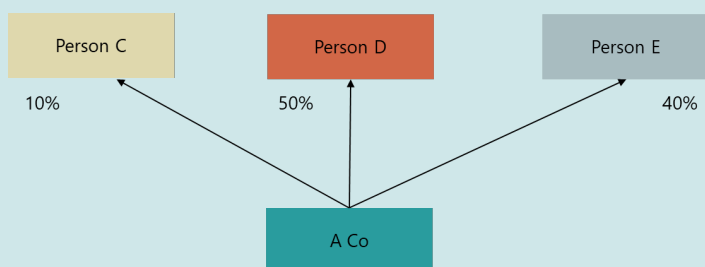


79. Example | Taura 15 illustrates where the tax loss of a non-amalgamating group company arising before amalgamation could be offset against the net income of an amalgamated company because the non-amalgamating group company, amalgamated company and the amalgamating company were at least 66% commonly owned.

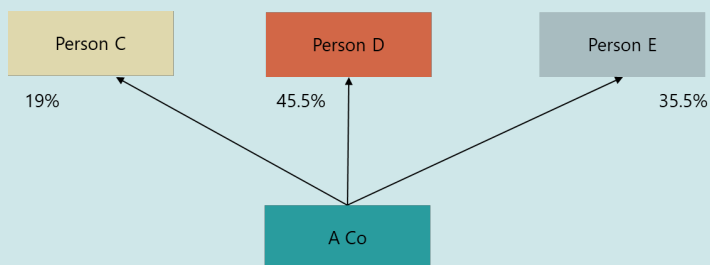
**Example | Taura 15 – Non-amalgamating group company offsets tax losses arising before amalgamation**

A Co and B Co amalgamate on 31 March 2023. A Co is the amalgamated company.

The shareholdings of each company have remained unchanged since incorporation and are as follows:

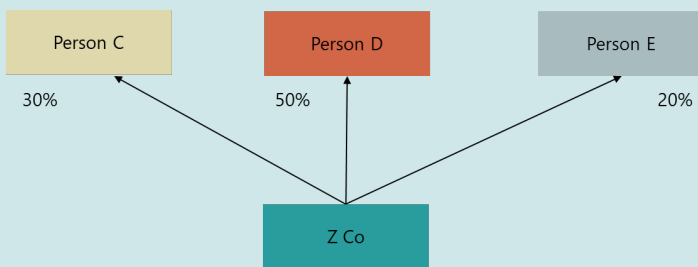


After the amalgamation, the shareholding of A Co is as follows:



Z Co (a non-amalgamating group company) has losses from the 2022 income year, which it wants to offset against the net income of A Co in the 2024 income year.

The shareholding of Z Co has remained unchanged since incorporation and is as follows:



The losses of Z Co arose before the date of amalgamation. Accordingly, Z Co can share its losses with A Co if Z Co meets a continuity test and the following commonality tests.

*Commonality of shareholding between B Co (amalgamating company) and Z Co is at least 66% from the start of the income year in which the loss arose (1 April 2021) to the date of amalgamation (31 March 2023)*

Shareholder	B Co	Z Co	Commonality of voting interest
C	20%	30%	20%
D	45%	50%	45%
E	35%	20%	20%
			85%

*Commonality of shareholding between A Co (amalgamated company) and Z Co is at least 66% from the start of the income year in which the loss arose (1 April 2021) to the date of amalgamation (31 March 2023)*

Shareholder	A Co	Z Co	Commonality of voting interest
C	10%	30%	10%
D	50%	50%	50%
E	40%	20%	20%
			80%

*Commonality of shareholding between A Co (amalgamated company) and Z Co is at least 66% after amalgamation (1 April 2023) until the date of offset (31 March 2024)*

Shareholder	A Co	Z Co	Common voting interest
C	19%	30%	19%
D	45.5%	50%	45.5%
E	35.5%	20%	20%
			84.5%

As A Co, B Co and Z Co were at least 66% commonly owned from the start of the income year in which the losses arose until the date of offset, Z Co can offset its losses against A Co's net income in the 2024 income year.

## Ordering of tax losses

80. Tax loss components included in a tax loss must be used in the order that they arose (s IA 9(1)).
81. An amalgamated company may have tax loss components for the same tax year. Where this occurs, the amalgamated company can elect the order in which it uses the losses. The amalgamated company should make this election when it files its income tax return. If the amalgamated company does not make an election, it will use the losses on a pro rata basis (s IA 9(3)).
82. Example | Taura 16 illustrates how the ordering rules apply when an amalgamated company has tax loss components for the same tax year.

### Example | Taura 16 – Using tax losses that arose in the same income year

A Co amalgamates with B Co, C Co and D Co on 31 March 2023. A Co is the amalgamated company.

A Co has net income in its 2024 income year of \$30,000.

A Co, C Co and D Co incurred losses in prior years as follows:

A Co: \$10,000; 2021 income year

C Co: \$30,000; 2022 income year

D Co: \$20,000; 2022 income year

A Co files its 2024 income tax return without making any notification to the Commissioner about the order in which it will use its 2022 tax losses.

C Co's 2022 tax loss (\$30,000) is 60% of the total 2022 tax loss (\$50,000) ( $30,000/50,000 = 60\%$ ) and D's tax loss is 40% of the total 2022 tax losses. It follows that A Co's losses will be used in this way:

Net income	\$30,000
Losses from 2021 income year (A Co)	(\$10,000)
Losses from 2022 income year (C Co)	(\$12,000) (60% of the remaining net income of A Co following the offset of its 2021 tax loss (\$20,000))
Losses from 2022 income year (D Co)	(\$8,000) (40% of the remaining net income of A Co following the offset of its 2021 tax loss (\$20,000))

The losses A Co carries forward to the 2025 income year are as follows:

C Co: \$18,000; 2022 income year

D Co: \$12,000; 2022 income year

Alternatively, A Co may make an election when filing its 2024 income tax return to use all of D Co's 2022 tax loss (\$20,000) or \$20,000 of C Co's 2022 tax loss of \$30,000.

*Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.*

*In draft form these items may not be relied on by taxation officers, taxpayers, or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.*

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki [public.consultation@ird.govt.nz](mailto:public.consultation@ird.govt.nz) or complete the [Internal Consultation feedback form](#)

## Appendix: Loss concepts

A1. This appendix summarises loss concepts that this statement refers to.

## Tax loss

- A2. A tax loss is essentially the total loss amount for the tax year that a loss company can share or carry forward to the subsequent tax year.
- A3. A loss company's "tax loss" for a tax year comprises:
- the loss balance carried forward to the tax year;
  - as relevant:
    - less the loss company's net income for the tax year; or
    - plus the loss company's net loss for the tax year;<sup>21</sup> and
    - plus various other amounts listed in s IA 2(4), for example, an amount of converted imputation credits arising under s LE 2 and an unused attributed controlled foreign company (CFC) or foreign investment fund (FIF) net loss for the tax year under ss IQ 2(3) and IQ 3(3).
- A4. A loss balance carried forward to a tax year is usually the loss for the preceding tax year that was not used in that year.<sup>22</sup>
- A5. For further information on "tax loss", see [33] to [36] of IS 22/07.

## Tax loss component

- A6. A tax loss is made up of tax loss components. The concept of a tax loss component is important because the continuity and commonality requirements (discussed further from [A8] (continuity) and [A11] (commonality)) must be tested for each component. Generally, tax loss components included in a tax loss must be used in the order in which they arose.
- A7. Tax loss components include:
- net losses from previous tax years (included in the loss balance carried forward to the tax year);
  - the loss company's net loss for the tax year (if any);

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<sup>21</sup> A person's "net loss" for a tax year is the difference between the person's annual total deductions and their annual gross income (ie, where the annual total deductions exceed the annual gross income).

<sup>22</sup> Section IA 3(4). The main way that a company can use a tax loss is by sharing it with a group company (s IA 3(2)). It can also use a tax loss to pay shortfall penalties (s IA 3(1)) or to reduce the amount of a taxable distribution received from a non-complying trust (s IA 3(3)).

- certain additional amounts listed in s IA 2(4), for example, an amount of converted imputation credits arising under s LE 2 and an unused attributed CFC or FIF net loss for the tax year under ss IQ 2(3) and IQ 3(3); and
- certain losses arising before the 2009 income year that the loss company was entitled to carry forward under previous legislation.

## Continuity tests

A8. If a company is to carry forward a tax loss, one of the following continuity tests must met:

- at least 49% continuity in the ownership of the loss company (**ownership continuity**); and/or
- continuity of the business activities of the loss company (**business continuity**).<sup>23</sup>

A9. Continuity must be tested for each tax loss component and must be maintained for the continuity period applying to that component. Broadly, the continuity period is the period from the start of the income year in which the tax loss component arose to the end of the income year in which the loss is used.<sup>24</sup>

A10. For further information on the continuity tests, see [48] to [59] of IS 22/07. For guidance on the main aspects of the business continuity test, see [IS 22/06: Loss carry-forward – continuity of business activities](#).

## Ownership commonality

A11. To share a tax loss with another company, the companies must satisfy the commonality requirement.

A12. Commonality refers to the requirement for companies to be at least 66% commonly owned. That is, there is a group of persons who hold in each company:

- common voting interests that add up to at least 66%; and
- if a market value circumstance exists for a company, common market value interests that add up to at least 66%.

A13. Companies that meet the commonality requirement are referred to in the loss rules as a “group of companies”.

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<sup>23</sup> The business continuity test may enable a company to carry forward tax losses despite a breach in ownership continuity if certain requirements are satisfied.

<sup>24</sup> Subject to application of the part-year rules.

- A14. Commonality must be tested for each tax loss component and be satisfied for the commonality period applying to that tax loss component. Broadly, the commonality period is the period from the start of the loss company's income year in which the tax loss component arose to the end of the income year in which the loss is used.
- A15. The requirement for the commonality to be met at all times during the commonality period means that it is important to consider where a company was incorporated or when it became a member of the group of companies.
- A16. For further information on "commonality", see [78] to [92] of IS 22/07.

## **Part-year rules**

- A17. The general loss rules include what they refer to as the "part-year rules".
- A18. The part-year rules recognise that part way through an income year, an event (eg, a change in the shareholding of a loss company) could result in companies either breaching or establishing continuity or ownership commonality for a tax loss component or a group of persons.
- A19. In the absence of the part-year rules, if a continuity or commonality event occurred part way through the income year, this could prevent a company from using a tax loss component for the income year, or from carrying it forward.
- A20. The part-year rules ensure that, in these cases, companies can still use certain losses in the relevant part-year periods. This is consistent with the purpose of the loss rules (to ensure that, largely, losses are available for the person who ultimately incurred the losses to use). It also avoids an outcome that would otherwise follow from the assessment of income tax on an annualised basis.
- A21. For further information on how the part-year rules apply, see [197] to [242] of IS 22/07.
- A22. Other part-year rules cater for breaches of the business continuity rules. However, these rules are outside the scope of this interpretation statement. For more information on these rules, see IS 22/06.

## **References | Tohutoro**

### **Legislative references | Tohutoro whakatureture**

Income Tax Act 2007, ss IA 2, IA 3, IA 4, IA 9, IC 2, IC 5, IC 6, IC 7, IC 8, IC 9, IE 1 to IE 5, IQ 2, IQ 3, IQ 4, LE 2, YC 10 and subpart BC

## Other references | Tohutoro anō

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IS XX/XX: *Income tax and GST – Amalgamations general guidance* (PUB00457, Interpretation Statement, draft for external consultation, Inland Revenue, 2024)

## About this document | Mō tēnei tuhinga

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