

31 July 2012

General Manager
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Dear Sir/Madam

Submission on the Improving Access to Company Losses Discussion Paper

Thank you for the opportunity to provide comments on the *Improving Access to Company Losses* discussion paper.

During the global financial crisis and its immediate aftermath, the Australian Chamber of Commerce and Industry (ACCI) called for the Australian taxation system to allow for the carry-back of revenue losses to offset against previous years' taxable income as a mean to provide much needed cash flow relief for struggling business. Unlike larger entities, smaller and middle ranking businesses were having difficulty in maintaining adequate cash flow levels as they had limited or no access to retained earnings and were also finding securing credit from financial institutions much more difficult.

We considered the limitations on the use of tax losses discouraged entrepreneurship and risk-taking and this is more sharply felt by smaller and middle ranking businesses that have less capacity to deal with risk. Restrictions on loss utilisation also limit the ability of the tax system to serve as an automatic stabiliser during an economic downturn as the tax value of deductions is not recouped by businesses until they have future income to offset losses against.

Therefore, ACCI welcomes the Government announcement in May to introduce a company loss carry-back measure which will apply to losses arising in the 2012-13 and later income years.

Nonetheless, we do not support the notion that the carry-back of tax loss provision should only apply to companies and other entities taxed like companies as the adoption of more flexible loss arrangement should be equally accessible to sole traders and partnerships. ACCI further notes the relevant loss provisions adopted in the United States, the United Kingdom and Germany also apply to unincorporated businesses.

Equal treatment of losses between different business entities would better serve the policy intent which is to overcome asymmetries and distortions as they currently exist, regardless of the chosen business structure. The latest 2009-10 *Taxation Statistics* reported that there were 1,043,034 sole traders and 312,616 partnerships that reported at least \$1 or more business income; compared to 664,792 entities taxed as companies in the 2009-10 financial year.



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While ACCI in general is supportive of rules to ensure the integrity of the carry-back of tax loss provision, the Government should ensure that the proposed integrity rules are not too prescriptive and complex for business, especially smaller enterprises, to benefit from the changes.

ACCI is concerned that the proposed inclusion of the existing same business test will restrict the ability of small business to access the carry-back of loss provision. ACCI considers the objective to ensure the integrity of the tax loss treatment should not unnecessarily lock businesses into an inefficient structure. Genuine attempts by a company's management to adapt to a changing business environment and to increase profitability and market share should not be seen as a hindrance to utilise the new tax loss provision.

In summary:

ACCI is supportive of the following:

- Adopting measures to allow for the carry-back of revenue losses;
- Changes to the loss provision should not be limited to incorporated businesses but also be extended to other business structures, including sole traders and partnerships;
- Implementation of integrity measures should focus on limiting prescription and providing greater simplicity for taxpaying entities, especially smaller enterprises; and
- For simplicity, the use of prevailing company tax rate for the utilisation year when calculating the amount of tax offset available in the claim year.

Yours sincerely,

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