Tax loss carry-back scheme: a quick overview

In April 2020, a temporary loss carry-back scheme was introduced to support taxpayers in dealing with the economic impact of the COVID-19 pandemic. The scheme applies to losses incurred (or expected) in either the 2020 or 2021 income years and allows these losses to be carried back one year to be offset against profits made in the preceding income year. Taxpayers can thereby receive a refund of any excess tax paid in a prior income year.

Who does the loss carry-back scheme apply to? Any business expecting a loss in either the 2020 or 2021 income year may be eligible to use the scheme. The scheme is not confined to companies, and applies to persons conducting their business through other entities that incur losses that can be carried back, such as trusts, partnerships, look-through companies and/or sole traders.

Persons who derive only reportable income (for example, PAYE or passive income) and multi-rate PIEs are not eligible to use the scheme, and ring-fenced residential rental losses cannot be carried back to the prior year.

Are there any shareholder continuity requirements for companies? A company must satisfy the 49% shareholder continuity requirement to carry back losses during the offset ownership period, being the two years affected by the election. This includes the net loss year (the second of the offset years) and the initial taxable income year (the first of the offset years).

For a group of companies, there must be at least 66% shareholder commonality between group companies in order to carry back losses. This requires that all group companies in the group are 66% or more commonly owned from the beginning of the year of profit to the end of the year of loss.

How much can a taxpayer carry back to a prior year? The amount that can be carried back is the smallest of either:

1. the estimated loss, before adjusting for the carry-back;
2. the taxable income in the prior year, again, before adjusting for the carry-back; or
3. an amount determined by the taxpayer.

The amount that can be carried back by a member of a wholly-owned group of companies is the amount of loss which would remain after the member uses its losses to offset income of other group companies in the net loss year.

Is there any thing else a taxpayer should be aware of in relation to the loss carry-back scheme? There a few things that taxpayers should be aware of when considering the loss carry-back scheme:

- where profits in the prior year have been distributed by way of a dividend or shareholder-employee salaries, this cannot be reversed to take advantage of a loss carry-back
- where a subvention payment has been made, this cannot be reversed to take advantage of a loss carry-back

- in relation to the time bar rule, legislation allows both the loss year and the preceding year to be reassessed at the same time, even if the preceding year is time barred
- to obtain a refund of income tax, a company must have an imputation credit account balance of at least the amount of the refund at the end of the most recently ended tax year, or alternatively, the company can complete an interim imputation return up to the date of the refund request