Inland Revenue
Te Tari Taake

March 2021

Fact sheet: Business continuity test (BCT)

Feature	Details
Main test	
Primary negative test. UK style major change block to loss carry forward.	The Australian test requires a company to assess whether it can carry losses forward after a change in ownership based on it meeting a "same or similar" threshold (a positive test). The UK test has a starting presumption the losses can be carried forward, unless a major change test is triggered (negative test). The proposed BCT for New Zealand will permit losses to be carried forward after a change in ownership as long as there is not a major change as described in the legislation.
Definition of major change set out with reference to Australian style factors (for example, similarity of activities and assets).	The proposed BCT for New Zealand will allow losses to be carried forward unless there is a major change in the nature of the company's business activities, having regard to the assets used and other relevant factors. Relevant factors would include business processes, use of suppliers, markets supplied to, and the type of product or services supplied. Not every change will be a major change. Any change in business activities (including use of assets) must be considered against the unchanged business activities (including use of assets) employed by the company to generate income to establish whether the change is "major". Generally, this would be a question of scale (in other words, how significant is the change in the context of the operations of the entire company). The test is not intended to give special weight to any particular factor.
Carve-outs from definition of major change for business development.	The Australian test has a factor which permits changes that result from the development or commercialisation of its business. It is important that the New Zealand BCT recognises that companies change in order to innovate and grow. The UK uses its guidance material to achieve a similar result but is more specific as to exactly what type of changes are carved out. The proposed New Zealand BCT will adopt this approach but include it in legislation to provide greater certainty. The proposed carve-outs are: • changes to increase efficiency, increase scale, or to keep pace with developing technology; and • rationalising the company's product or service range by introducing new items produced using the same or largely the same assets of the company (excluding land but including fixtures to land) or of a kind relating to those already being produced or previously produced.

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	Excluding land (but not fixtures) is an integrity measure as it may be easy for a company to argue that it is using largely the same assets (if land is a large part of the assets) and this could allow a complete change of the business (for example, farming to a factory producing widgets).
Defined time period for measurement of business continuity, gradual change is not a relevant consideration.	Measurement of the business and whether it meets the continuity test can be examined from the time of the ownership change until the earliest of: • the end of the income year in which the losses are utilised; or • the end of the income year five years after the ownership change (except as noted below). Using this defined time period rather than the Australian approach of measurement from the time of a change in ownership up until when the loss is used will reduce compliance and administrative costs while also ensuring that a business is not unduly constrained from making major changes indefinitely.
Anti-avoidance measures	
Purpose statement.	This will set out the purpose of the policy: to remove an impediment to sensible business reorganisations while preventing loss trading.
Pre-purchase dormant company rule.	This rule would sit alongside a “major change” as a way in which the business continuity test will not be met. This rule will disallow carry forward of losses if the change in ownership occurs at any time after the scale of activities in the business carried on by the company has ceased and before any significant revival of the business.
Anti-injection rule similar to section 175-10 of the ITAA 1997 (Australia).	This rule would be modelled on Australia’s general income tax anti-injection rule, but will apply only to companies carrying losses forward in reliance on the BCT and be limited to transactions with associated persons.
Anti-cost transfer rule	This rule would be the opposite of the anti-injection rule by stopping a company artificially transferring costs to another group member for no charge which essentially artificially increases the loss company’s income.
Change in business before change in ownership.	This rule would be modelled on Australia’s anti-avoidance rule preventing a business being changed before a change in ownership for the purpose of meeting the business continuity test (including dormant company rule) after the change. The test would look back two years before the ownership change.

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Application to losses arising from the 2013–14 income year onwards.	Rather than apply the business continuity test to the full stock of losses, the proposal would apply the test to losses arising from the 2013–14 income year onwards.
Loss grouping rules retained.	The commonality rules that must be met for loss grouping would continue to apply to any carry forward loss to prevent a loss company being subsumed into a profitable group. However, we would allow companies purchased as a 'group' to continue to offset within the group as long as the 66% ownership commonality test is met. The test would consider the business activities of the group, rather than at an individual entity level, when a group is acquired.
Removal of the five-year rule for companies who have significant DB 31(3) bad debt deductions.	Companies who are holders or dealers in financial arrangements are permitted to take bad debt deductions for capital losses will not have the five-year continuity rule applied to them and they must meet the BCT until the losses are utilised.
The current rules for the carry forward of mining company losses will remain unchanged.	Mineral mining companies essentially have their own similar business test built into the existing mining tax rules. This regime would continue for those entities and not the new BCT.