

BINDING GENERAL RULING (INCOME TAX) 73

DATE: 30 July 2024

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 20(1)(a)(i)
**SUBJECT : MEANING OF TAXABLE INCOME FOR PURPOSES OF SETTING OFF
THE BALANCE OF AN ASSESSED LOSS BY A COMPANY**

Preamble

For the purposes of this ruling –

- **“assessed loss”** means the term as defined in section 20(2), and refers to the tax loss that arises in the current year of assessment after deducting the admissible deductions in section 11 from the income against which they are admissible;
- **“balance of assessed loss”** means the assessed loss that is brought forward from the preceding year of assessment;¹
- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **“company”** means a “company” as defined in section 1(1) and envisaged in section 20(1)(a)(i);
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“the Eighth Schedule”** means the Eighth Schedule to the Act; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This BGR provides direction for the consistent application of the limitation on the set-off of any balance of assessed loss by a company under section 20(1)(a)(i) as amended by section 18 of the Taxation Laws Amendment Act 20 of 2021.

2. Background

An assessed loss is incurred by a taxpayer² when the deductions claimed by that taxpayer exceed its income for the relevant year of assessment.³

¹ See the methodology for determining a balance of assessed loss as described in *CIR v Louis Zinn Organization (Pty) Ltd* 1958 (4) SA 477 (A), 22 SATC 85 at 95.

² The term “taxpayer” as defined in section 1(1) means any person chargeable with any tax under the Act.

³ The term “year of assessment” is defined in section 1(1) and “means any year or other period in respect of which any tax or duty leviable under this Act is chargeable, and any reference in this Act to any year of assessment ending the last or the twenty-eighth or the twenty-ninth day of February

Section 20(1)(a) provides that when determining the taxable income of a company which was derived from the carrying on of any trade, a balance of assessed loss incurred in any previous year of assessment and which has been carried forward, may be set off in the current year of assessment against the income derived by such company. Any unutilised portion of the assessed loss may be carried forward to a subsequent year of assessment.

With effect from 31 March 2023 and applicable in respect of years of assessment ending on or after that date, the set-off of the balance of assessed losses for companies carried forward from the preceding year of assessment is limited to an amount that does not exceed the higher of R1 million and 80% of the amount of taxable income determined before taking into account the application of section 20.⁴

The above limitation on the set-off of the balance of assessed loss by a company is not applied consistently, especially relating to the treatment of taxable capital gains. Some apply the limitation only on taxable income from trade and thus exclude taxable capital gains from the taxable income. Under another school of thought, the limitation is applied to “taxable income” as defined in section 1(1) and includes taxable capital gains in the taxable income.

3. Application of the law

The determination of “taxable income” is central to the calculation of a taxpayer’s liability for normal tax. Section 1(1) defines “taxable income” as meaning the aggregate of –

- “(a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and
- (b) all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act;”.

The words “all amounts to be included” in paragraph (b) of the above definition includes section 26A, which states that the taxable capital gain of a person as determined in the Eighth Schedule shall be included in the taxable income of that person for that year of assessment.

The introductory words to section 20(1) refer to “taxable income derived by any person from carrying on any trade”. This implies that a company can set off the balance of assessed loss only if it conducted a trade, that is, it had to have income from trade and not only so-called passive income or income of a capital nature.⁵ The reference to “carrying on any trade” therefore does not limit the taxable income to only that from trade.

shall, unless the context otherwise indicates, in the case of a company or a portfolio of a collective investment scheme in securities be construed as a reference to any financial year of that company or portfolio ending during the calendar year in question”.

⁴ Section 20(1)(a) was substituted by section 18(1) of the Taxation Laws Amendment Act 20 of 2021.

⁵ See Interpretation Note 33 “Assessed Losses: Companies: the ‘Trade’ and ‘Income from Trade’”.

The 80% limitation in section 20(1)(a)(i) refers to the company's taxable income without limiting it to so-called trading income. Therefore, "taxable income" as defined in section 1(1), which includes taxable capital gains, must be used when applying the 80% limitation.

4. Ruling

Having regard to the wording of section 20(1)(a)(i) and particularly the phrase "80 per cent of the amount of taxable income", the calculation of the 80% limitation amount should be based on "taxable income" as defined in section 1(1), which includes taxable capital gains.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

5. Period for which this ruling is valid

This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.

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