

TR 24

Facts

A company engaged in the manufacture of animal and poultry feeds proposed to issue new shares due to expansion of the business and other factors. The change in the ownership of shares of the company as at 30 September 1999 did not exceed 50% while at the end of the income year ended 30 September 2000, less than 50% in the nominal value of the allotted shares in the company were held by or on behalf of the same persons.

Point at issue

Whether the company is entitled to carry forward the unrelieved losses as at 30 September 1998 for set-off against its net income for the income year ended 30 September 1999 and in succeeding years.

Ruling

In accordance with Section 59 of the Income Tax Act 1995 and the conditions prescribed in Regulation 19 of the Income Tax Regulations 1996, losses incurred by a company in an income year may be carried forward and set-off against its net income of the following year and in the succeeding years, provided that at the end of each of those years, not less than 50% in the nominal value of the allotted shares in the company are held by or on behalf of the same persons.

The company is therefore entitled to carry forward the unrelieved losses as at 30 September 1998 for set off against its net income for the income year ended 30 September 1999 as the change in the ownership of shares as at that date did not exceed 50%.

At the end of the income year ended 30 September 2000, less than 50% in the nominal value of the allotted shares in the company were held by or on behalf of the same persons. Any unrelieved losses as at 30 September 1999 cannot therefore be carried forward for set off against the company's net income for the income year ended 30 September 2000 and succeeding years.