

# Loss Carry-Forward Survives the 2025 Act

## Section 536 Sub-Clause 5: How Section 72, Section 32(2), MAT Credit and AMT Credit Cross April 1, 2026 Intact

The Income-tax Act 2025 repeals the 1961 Act effective **April 1, 2026** — but Section 536 Sub-Clause 5 expressly preserves every carry-forward tranche your clients have accumulated. This deep-dive carousel maps every loss type, every forfeiture gate, and every practitioner action step.

#INCOMETAX2025

#SECTION536

#LOSSCARRYFORWARD

#MATCREDIT

#APRIL2026



# Section 536 Sub-Clause 5 — The Anchor

The plain reading of Section 536 Sub-Clause 5 is unambiguous: **the repeal of the 1961 Act shall NOT affect any right to carry forward and set off any loss (including unabsorbed depreciation), MAT credit, or AMT credit determined under the 1961 Act.**

## Consequence 1 — Computation

All computations for **AY 2025-26 and earlier** returns continue to follow the 1961 Act rules. The 2025 Act does not retroactively alter how losses were determined.

## Consequence 2 — Clock Preserved

The carry-forward window runs on the **1961 Act clock**. The 2025 Act does NOT restart the timer. An AY 2022-23 Section 72 loss still expires AY 2030-31 — not AY 2034-35.

## Consequence 3 — Set-Off Regime

Actual set-off happens against income computed under the **2025 Act from AY 2027-28 onwards**. The 2025 Act's income heads govern the absorption, but the loss quantum is frozen under 1961 Act rules.

✔ **Key Stat: "1961 Act clock — preserved intact."** Section 536 Sub-Clause 5 is the single most important savings provision for every loss-carry-forward client crossing the April 1, 2026 cutover.

# The Loss-by-Loss Carry-Forward Map

Every 1961 Act Section → Surviving Window → Set-Off Head Restriction (Anchor: Section 536 Sub-Clause 5)

Type of Loss / Credit	1961 Act Section	Carry-Forward Window (AYs)	Set-Off Head Restriction
Non-speculation business loss	Section 72	8 AYs from year of first computation	Business profits only (any non-speculation business)
Speculation business loss	Section 73	4 AYs from year of loss	Speculation profits ONLY
Specified business loss (Section 35AD)	Section 73A	<b>INDEFINITE</b>	Specified business profits ONLY
Short-term capital loss	Section 74(1)(a)	8 AYs from year of loss	Any capital gain (STCG or LTCG)
Long-term capital loss	Section 74(1)(b)	8 AYs from year of loss	Long-term capital gain ONLY
Race-horse activity loss	Section 74A	4 AYs from year of loss	Same activity (race-horse) income ONLY
Unabsorbed depreciation	Section 32(2)	<b>INDEFINITE</b>	Any income head (no restriction)
House property loss	Section 71B	8 AYs from year of loss	House property income ONLY
MAT credit	Section 115JAA(4)	15 AYs from year of payment	Against excess of normal tax over MAT liability
AMT credit	Section 115JD(4)	15 AYs from year of payment	Against excess of normal tax over AMT liability

📌 **Anchor for all rows:** Section 536 Sub-Clause 5 of the Income-tax Act 2025 preserves every tranche above. No fresh determination is required — the 1961 Act computation stands.

# Forfeiture Gates — Three 1961 Act Sections That Still Bite

Section 536 Sub-Clause 5 preserves rights that were **validly determined** under the 1961 Act. A forfeited right was never determined to begin with — the 2025 Act does NOT cure these forfeitures.

1

## Section 78 — Partnership Reconstitution

**Trigger:** Death or retirement of a partner.

**Effect:** That partner's *proportionate share* of the firm's accumulated loss is forfeited permanently. The remaining partners' shares survive.

**Practitioner action:** On every partnership reconstitution event, recompute the surviving loss quantum before filing the next return.

2

## Section 79 — Closely-Held Company Ownership Change

**Trigger:** More than **49% of beneficial ownership** changes hands since the year of loss.

**Effect:** ALL accumulated Section 72 loss from that year onwards is forfeited — automatic, not appealable.

**Critical note:** The test is applied **year-by-year**. A cap-table change in Nov 2025 can forfeit losses even before the 2025 Act cutover.

3

## Section 80 — Late Return Filing

**Trigger:** Return NOT filed within the Section 139(1) due date for the loss year.

**Effect:** PERMANENTLY forfeits the right to carry forward Section 72, 73, 73A, 74, and 74A losses for that year.

**Exception:** Section 32(2) unabsorbed depreciation does **NOT** require timely filing — it survives regardless.

# Four Practitioner Scenarios — Section 536 in Action

Specific rupee amounts, expiry AYs, and Section 79 forfeiture outcomes

## Scenario 1 — SaaS Startup

**Facts:** Rs 2.4 crore Section 72 loss across AYs 2022-23, 2023-24, 2024-25 + Rs 80 lakh Section 32(2) unabsorbed depreciation.

### Outcome:

- AY 2022-23 tranche → expires **AY 2030-31**
- AY 2023-24 tranche → expires **AY 2031-32**
- AY 2024-25 tranche → expires **AY 2032-33**
- Rs 80L Section 32(2) → **INDEFINITE**

Every tranche survives the April 1, 2026 cutover intact under Section 536 Sub-Clause 5.

## Scenario 2 — Manufacturer with MAT Credit

**Facts:** Rs 1.1 crore MAT credit — Rs 60L from AY 2019-20 + Rs 50L from AY 2020-21.

### Outcome:

- AY 2019-20 tranche (Rs 60L) → survives through **AY 2034-35**
- AY 2020-21 tranche (Rs 50L) → survives through **AY 2035-36**

Section 115JAA(4) 15-AY clock runs from year of MAT payment. Section 536 Sub-Clause 5 preserves both tranches.

## Scenario 3 — HNI Capital Losses

**Facts:** Rs 47 lakh short-term capital loss (STCL) + Rs 8 lakh long-term capital loss (LTCL) — both from AY 2024-25.

### Outcome:

- Rs 47L STCL → Section 74(1)(a), 8-AY clock, set-off against **any capital gain**
- Rs 8L LTCL → Section 74(1)(b), 8-AY clock, set-off against **LTCG ONLY**
- Both expire **AY 2032-33**

Head-restriction is also preserved — the 2025 Act does not liberalise the set-off rules for carried-forward losses.

## Scenario 4 — Closely-Held Company ⚠️

**Facts:** Rs 50 lakh Section 72 loss + **Nov 2025 ownership flip** exceeding 49% beneficial ownership change.

### Outcome:

- Section 79 is triggered **automatically**
- Rs 50L Section 72 loss is **FORFEITED**
- Section 536 Sub-Clause 5 does **NOT** override Section 79
- A forfeited right was never "determined" — nothing to preserve

Cap-table changes must be stress-tested against Section 79 BEFORE execution.

# The Set-Off Cascade Order

Memorize this sequence for AY 2026-27 and every subsequent year under the 2025 Act

#

## Step 1 — Current Year Depreciation

Section 32(1) current year depreciation is deducted first, before any brought-forward item.

🏠

## Step 2 — Unabsorbed Depreciation

Section 32(2) brought-forward unabsorbed depreciation — indefinite window, any income head.

🏭

## Step 3 — Section 73A Specified Business Loss

Section 35AD specified business losses — indefinite window, restricted to specified business profits.

👜

## Step 4 — Section 72 Business Loss (Oldest First)

Brought-forward non-speculation business losses — 8-AY clock, oldest tranche consumed first.

🔪

## Step 5 — Section 73 Speculation Loss

Brought-forward speculation losses — 4-AY clock, restricted to speculation profits only.

Z

## Step 6 — Section 74 Capital Loss (Head-Restricted)

STCL against any capital gain; LTCL against LTCG only — 8-AY clock, head-restriction preserved.

🏠

## Step 7 — Section 71B House Property Loss

Brought-forward house property losses — 8-AY clock, restricted to house property income only.

🐎

## Step 8 — Section 74A Race-Horse Loss

Race-horse activity losses — 4-AY clock, restricted to same activity income only.

🚗

## Step 9 — MAT Credit / AMT Credit Against Tax Payable

Section 115JAA / 115JD credits applied last — against excess of normal tax over MAT/AMT — 15-AY clock.

# Stakeholder Impact — Three Groups Need a Fresh Review NOW

Every stakeholder category has a distinct action priority before the AY 2026-27 return cycle opens



## CA Professionals

- Build a **single-spreadsheet loss-tranche register** for every client portfolio: year, section, quantum, expiry AY
- Document the **Section 536 Sub-Clause 5 anchor** in every client memo before the AY 2026-27 return cycle
- Cross-check Schedule CFL and Schedule UD from the latest ITR for each client
- Flag Section 80 compliance — confirm every loss year had a timely Section 139(1) filing
- Prepare a Section 72A continuity certificate for every restructuring client



## Founders / Startups

- Pull **Schedule CFL + Schedule UD** from your latest ITR immediately
- Confirm Section 72 tranches survive the April 1, 2026 cutover — map each tranche's expiry AY
- Track **Section 79** if any cap-table change is in flight — get a Section 79 stress-test done before execution
- Verify Section 47(xiiib) conditions if an LLP conversion occurred in the last 5 years
- Ensure all loss-year returns were filed within Section 139(1) due dates



## MSMEs / Closely-Held Companies

- Map **shareholding history year-by-year** — Section 79 test must be passed every AY, not just once
- Flag any beneficial-ownership change exceeding **49%** — forfeiture is automatic and not appealable
- Build a Section 79 compliance tracker for every AY from the year of loss to the current year
- For amalgamations: prepare Section 72A/72AA/72AB continuity memo with supporting documentation
- Engage your CA to review the loss register before any M&A, restructuring, or investor round

# Critical Caveats — Four Landmines in the Carry-Forward Landscape

Section 536 Sub-Clause 5 preserves rights — but only rights that were validly created and never forfeited

## ⚠ Section 80 Is Unforgiving

Every loss year **MUST** have been filed within the Section 139(1) due date, or the carry-forward right was *never created*. The 2025 Act does NOT revive a forfeited right. There is no curative provision. Audit every loss year's filing date before issuing a Section 536 comfort memo.

**Exception:** Section 32(2) unabsorbed depreciation survives even without timely filing.

## ⚠ Section 79 Is Year-by-Year

Closely-held companies must pass the **51% beneficial-ownership continuity test EVERY AY**, not just in the year of loss. A clean AY 2022-23 does not protect against a Section 79 trigger in AY 2025-26. Build a rolling ownership tracker — one missed year can forfeit all accumulated losses.

## ⚠ Section 47(xiiib) LLP Conversion Conditions

LLP conversion conditions under Section 47(xiiib) continue to track for **5 years post-conversion**. Any breach of the conditions (e.g., profit-sharing ratio change, asset transfer) **reverses the carry-forward** and triggers tax on the previously exempt transfer. Maintain a 5-year condition compliance calendar.

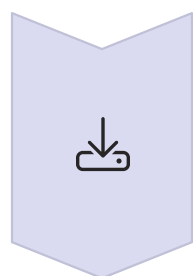
## ⚠ Section 72A Amalgamation Conditions

Section 72A conditions continue to apply post-amalgamation. For every restructuring file, prepare a **Section 72A continuity certificate** documenting: (a) industrial undertaking continuity, (b) employee retention compliance, (c) asset holding period. A breach post-merger forfeits the amalgamated company's right to the absorbed losses.

⚠ **Bottom line:** Section 536 Sub-Clause 5 is a preservation clause, not a revival clause. It cannot breathe life into a right that was forfeited under Sections 78, 79, or 80 before the 2025 Act came into force.

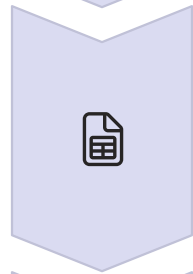
# Nine-Step Review Sprint — Your AY 2026-27 Action Plan

Execute this sprint before the AY 2026-27 return cycle to lock in every carry-forward right under Section 536 Sub-Clause 5



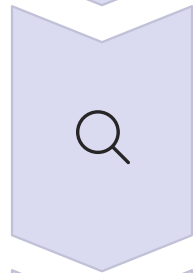
## Step 1 — Pull ITR + Schedules

Download the latest ITR and extract **Schedule CFL** (carry-forward losses) and **Schedule UD** (unabsorbed depreciation) for every client.



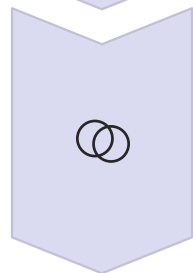
## Step 2 — Build Loss-Tranche Register

Tabulate every loss tranche: **year | section | quantum | expiry AY**. This register is the foundation of every Section 536 comfort memo.



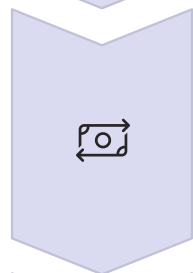
## Step 3 — Section 79 Shareholding History

For closely-held companies: build a year-by-year shareholding history. Apply the Section 79 beneficial-ownership test for every AY from the year of loss to AY 2025-26.



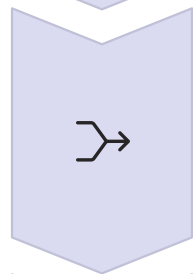
## Step 4 — Section 78 Partnership Reconstitution Check

For partnerships and LLPs: verify reconstitution history. Identify any death or retirement events and recompute surviving loss quantum for each event.



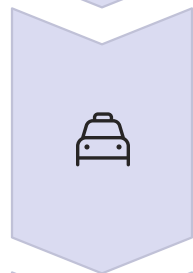
## Step 5 — Section 47(xiiib) 5-Year Condition Tracker

For company-to-LLP conversions: maintain a 5-year condition compliance calendar. Flag any breach risk before it triggers a reversal of the carry-forward.



## Step 6 — Section 72A/72AA/72AB Continuity Memo

For amalgamations and demergers: prepare a Section 72A continuity certificate documenting industrial undertaking continuity, employee retention, and asset holding compliance.



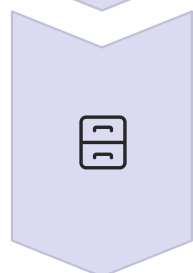
## Step 7 — MAT/AMT Credit Tranche Table

For MAT/AMT credit holders: build a tranche table with year of payment, quantum, and expiry AY (15-AY clock from year of payment). Confirm Section 115JAA(4)/115JD(4) compliance.



## Step 8 — Document Section 536 Anchor in Client Memo

Before the AY 2026-27 return closes, issue a formal client memo citing **Section 536 Sub-Clause 5** as the anchor for every preserved carry-forward right. This memo is your professional protection.



## Step 9 — File Tracker in AY 2026-27 Working Papers

File the complete loss-carry-forward review tracker in AY 2026-27 working papers. This becomes the reference document for the **AY 2027-28 first-2025-Act-set-off cycle** — the first year losses are absorbed under the new Act.

**Need help mapping your loss-carry-forward register and Section 536 anchor for AY 2026-27?**

**Talk to an Expert:** [calendly.com/asbanka-info/30min](https://calendly.com/asbanka-info/30min)

*CA Adityavikram Banka, Director, A S Banka Advisors Private Limited*