

Negligible value claims and Income Tax losses on disposals of shares you have subscribed for in qualifying trading companies

This Help Sheet explains two topics:

- how you can make a negligible value claim
- how you can claim that certain allowable capital losses on the disposal of shares you subscribed for in a qualifying trading company should be set against your income.

The following notes are a simplified summary of the legislation as it applies in some common cases. If you are in any doubt about your circumstances you should ask your tax adviser. We will also be pleased to help and provide any forms you may require. You can also consult our Capital Gains Manual, which explains the rules in more detail at www.hmrc.gov.uk

This Help Sheet will help you fill in the *Capital gains summary* pages of your Tax Return.

Negligible value claims

If you own an asset which has become of negligible value you may make a claim to be treated as though you had sold the asset and immediately reacquired it at the time the claim is made for an amount equal to its value (a negligible value claim), which should be specified in the claim. Note that you must still own the asset when you make the claim and that the asset must have become of negligible value while you owned it. An asset is of negligible value if it is worth next to nothing.

When you make a negligible value claim you may specify an earlier time falling in the two previous tax years at which the deemed disposal should be treated as occurring. All the necessary conditions for the claim have to be met at that earlier time as well as at the time you make the claim.

If you make a negligible value claim during the tax year 2009-10, any loss resulting from the deemed disposal will arise in that year, unless you claim to be treated as if you had disposed the asset at a time falling in 2007-08 or 2008-09.

If you want to claim a loss for 2009-10, write to us giving details of the negligible value claim and your calculations of the capital loss resulting from the deemed disposal of the asset. Alternatively, you may make a negligible value claim during 2009-10, before you make a loss claim, by sending the details to us. If you want us to check any valuation you have used in connection with that deemed disposal you can include form CG 34 with your negligible value claim. This will help you to calculate the loss for 2009-10 which you will claim in your 2009-10 Tax Return. The form CG 34 is available from the Orderline or at www.hmrc.gov.uk

If you want to claim a loss in respect of an asset that was or became of negligible value during 2008-09, you should make the claim in your Tax Return for that year. Include the loss in box 4 on page CG 1 of the *Capital gains summary* pages, put 'X' in box 20, 26 or 33 (as applicable) and provide an accompanying computation. You should provide details of your negligible value claim (including the date during

2008-09 when you want to be treated as if you had sold the asset) in box 35 on page CG 2 or in the computation included with your Tax Return.

During the tax year 2009-10 you may also be able to claim to be treated as if you had sold an asset you owned for its negligible value at the time falling in the tax year 2007-08. You can do this by amending your 2007-08 Tax Return on or before 31 January 2010 or, after that date, by sending a notice to us before 6 April 2010.

Claim to set loss against income

As described in the following paragraphs, you may be able to reduce your Income Tax liability where you have allowable capital losses available following a disposal of shares, or a negligible value claim in respect of shares you acquired by subscription in a qualifying trading company.

Example 1

You subscribed £10,000 in 1995 for ordinary shares in a company making furniture. The business failed in August 2008, the shares becoming worthless. You made a negligible value claim in respect of the shares in September 2008 and claimed an allowable capital loss of £10,000 for 2008-09 from the deemed disposal of shares. If all of the conditions for relief are met, you may claim to set the allowable capital loss on the shares either against chargeable gains in the normal way, or against your income for 2008-09 or against your income for 2007-08.

In what type of company should I have subscribed for shares?

The company must satisfy the following conditions:

- the company must
 - if the shares were issued to you before 6 April 1998, have always been resident in the UK
 - if the shares were issued to you on or after 6 April 1998, have carried on its business wholly or mainly in the UK from the time it was incorporated (or one year before the shares were issued to you if that is later) until the date of the disposal that results in the loss
- the company must
 - if the shares were issued to you before 6 April 1998, not have had any of its shares listed on a recognised stock exchange since it was incorporated (or one year before the shares were issued to you if that is later)
 - if the shares were issued to you on or after 6 April 1998
 - not have had gross assets whose value exceeded the limit in force when the shares were issued to you (see page 3 for more information on the 'gross assets rule') and
 - have been an 'unquoted company' when the shares were issued to you and there must have been no arrangements then for it to cease to be an unquoted company. The company will still qualify if it subsequently ceased to be an unquoted company provided it ceased on or after 7 March 2001. For these purposes an unquoted company is a company none of whose shares are listed on a recognised stock exchange
- the company must not be a building society or a registered industrial and provident society

- the company must be a trading company, that is
 - if the shares were issued to you before 6 April 1998, a company whose business consists wholly or mainly of the carrying on of a trade (or trades) or the holding company of a trading group
 - if the shares were issued to you on or after 6 April 1998, a company
 - whose only purpose or existence, apart from purposes incapable of having any significant effect on the extent of its activities, is that of carrying on one or more qualifying trades (see the section headed 'Do all trading companies qualify?' below), or
 - with one or more subsidiaries provided the non-qualifying activities (such as investment activities or non-qualifying trades) of the group are not substantial. In this context, we generally regard anything amounting to more than about 20% as being substantial.

The gross assets rule applies to shares issued to you after 5 April 1998. Where the shares were issued before 6 April 2006 the company's gross assets (or the group's where you hold shares in the parent company of a group) must not exceed £15 million immediately before, and £16 million immediately after, the issue. For share issues from 6 April 2006 the limits are £7 million and £8 million respectively. See the section headed 'Do all trading companies qualify?' below for further details.

The company or the trading group may have stopped trading before you disposed of the shares. You may still be entitled to relief if this happened no more than three years before the disposal. See the section headed 'What if the company has stopped trading?' on page 4 for further details.

Do all trading companies qualify?

No. Companies carrying on some trades do not qualify.

If the shares were issued to you before 6 April 1998, companies carrying on the following trades do not qualify:

- those consisting wholly or mainly of dealing in shares, securities, land, trades or commodity futures
- those not pursued on a commercial basis and in such a way that they would be reasonably expected to make a profit.

If the shares were issued to you on or after 6 April 1998, companies carrying on the following trades do not qualify:

- those consisting wholly or mainly of dealing in land, in commodities or futures or in shares, securities or other financial instruments
- those that are not qualifying trades for the purposes of the Enterprise Investment Scheme (go to www.hmrc.gov.uk)
- those not pursued on a commercial basis and in such a way that they would be reasonably expected to make a profit.

In addition, there is no relief for losses on shares in the holding company of a non-trading group.

How long must the company have been a trading company?

If the company was a trading company when you disposed of the shares it must satisfy either of the following conditions:

- it was a trading company throughout the six years to the date of disposal, or
- it was a trading company throughout its active existence if that is less than six years.

If your shares are in the holding company of a trading group, the group business as a whole must satisfy these conditions.

What if the company has stopped trading?

You will still qualify for relief if the company has stopped trading when you dispose of the shares as long as all the following conditions are satisfied:

- the company stopped trading no more than three years before the disposal, and
- the company has not started a non-qualifying activity such as investment or a non-qualifying trade, and
- at the date it stopped trading it satisfied the conditions set out in the previous paragraph headed 'How long must the company have been a trading company?'

What if there has been a share reorganisation or a take-over?

If, as a result of a share exchange, the company in which you subscribed for shares becomes a wholly owned subsidiary of another company, the availability of loss relief against income will not be jeopardised, provided that the ownership of the new company is exactly the same as that of the old company. In such a case, the two companies will be treated as if they were one and the same company for the purpose of determining whether relief is available on the disposal of your shares in the new company.

In any other case, if the shares you dispose of were issued in exchange for shares in another company, there are only limited circumstances in which relief against income may be available.

You may also hold shares that were acquired following a share reorganisation in a company. Help Sheet 285 *Share reorganisations, company take-overs and Capital Gains Tax* describes the general rules for Capital Gains Tax where there is a share reorganisation. You may dispose of bonus shares which were issued to you without payment and in respect of other shares you held in a company, being of the same class and carrying the same rights as those other shares. If so, then the bonus shares are treated as having been issued to you when the other shares were issued to you. Where you acquire shares as part of a rights issue they are acquired when they are issued to you. The time you acquired the shares is important for working out whether loss relief against income is due (for example, the gross assets rule).

If you have incurred an allowable capital loss on the disposal of shares which were issued to you in a reorganisation or in exchange for shares in another company, ask us or your tax adviser if you need more detailed information about the availability of relief against income.

Which shares qualify?

The shares must not be fixed rate dividend preference shares and you must have subscribed for them. You will also be treated as having subscribed for any shares your spouse or civil partner subscribed for and transferred to you during their lifetime. You will have subscribed for shares if they were issued to you for money or money's worth.

Which disposals qualify?

The loss must have been made on a disposal by way of:

- a negligible value claim, or
- an arm's length bargain, or
- a distribution made in the course of winding up the company, or
- the dissolution of the company.

How is the allowable loss calculated?

You calculate the loss in exactly the same way as other allowable capital losses. If you subscribed for all the shares disposed of, all of the allowable loss is available for relief. You may have a holding of shares some of which you subscribed for and some of which you bought or acquired by gift or inheritance. Only the shares you subscribed for will qualify for relief. There are rules for determining what proportion of the allowable loss qualifies for relief. Ask your tax adviser or us for details. Any part of the allowable loss that is not set against income remains an allowable loss to be deducted from chargeable gains. Any loss you use against your income is not available to use against capital gains.

How and when to claim the relief

The relief has to be claimed within one year of 31 January following the year in which the loss was made. An allowable loss made in 2008-09 therefore has to be claimed on or before 31 January 2011.

If you make an allowable loss in 2008-09 you can claim the relief for 2008-09 or 2007-08. You can make those claims as follows:

2008-09 you can claim the relief by making an entry in box 12 on page CG 1 of the *Capital gains summary* pages. You must also include the capital losses that are the subject of your claim in box 4 on page CG 1 and give details of the capital losses on page CG 2 in box 35 or in your computations

2007-08 like 2008-09, you can claim the relief by making an entry in box 13 on page CG 1 of the *Capital gains summary* pages and by including the capital losses that are the subject of your claim in box 4 on page CG 1 and giving details of the capital losses on page CG 2 in box 35 or in your computations. Any relief due for 2007-08 will be given as an adjustment to the amount of tax for 2008-09.

If Income Tax relief for capital losses is claimed, the losses cannot also be set against capital gains.

If you made an allowable loss in 2007-08, you have until 31 January 2010 to claim relief against your income of 2007-08 or 2006-07 by amending your 2007-08 Tax Return.

How is the relief given?

The relief is given by deducting the allowable loss from your total income from all sources, before any deduction for your personal Income Tax allowances. This means you cannot restrict the claim to leave your income equal to your personal Income Tax allowances.

You may claim that the loss be set against your income of the year in which the loss arose or against your income of the preceding year. If the loss is sufficiently large, you may claim that it be set against the income of both years. If you claim for both years, your claim should show which year is to take priority.

If there is still a balance of unused capital loss, it can be deducted from chargeable gains in the usual way.

An allowable capital loss made in 2008-09 can be claimed against your income in 2008-09 or 2007-08 or both years depending on the amount of your income and losses.

Example 2

In 1995 you subscribed £50,000 for ordinary shares in a trading company. In 2008 the company fails and you make a negligible value claim for 2008-09. You have an allowable loss of £50,000. Your income and Income Tax personal allowances for 2007-08 and 2008-09 are as follows:

	2007-08	2008-09
Income	£30,000	£32,000
Personal allowances	£5,225	£6,035

You may claim that the allowable loss on the shares be set against your income for 2008-09 and any balance 2007-08. The relief is given as follows:

	2008-09	2007-08
Income	£32,000	£30,000
minus loss	<u>£32,000</u>	<u>£18,000</u>
	zero	£12,000
minus personal allowances		<u>£5,225</u>
Taxable income		£6,775

Please bear in mind that the allowable loss on the shares used in 2008-09 may not be restricted to preserve your personal allowances. Alternatively, you may claim £30,000 against your 2007-08 income and, if you wish, £20,000 in 2008-09.

There is an order of priority if you are also claiming a deduction for other losses. In 2008-09 this is:

- first, allowable capital losses on shares disposed of during 2008-09
- second, allowable capital losses on shares carried back from 2009-10
- third, other Income Tax losses.

Please note, any allowable capital losses on shares not set against your income can be deducted from chargeable gains in the usual way.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any rights of appeal.