



**HM Revenue
& Customs**

Income Tax Losses Toolkit

2010-11 Self Assessment Tax Returns

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Introduction

Tax agents and advisers play an important role in helping their clients to get their tax returns correct. This toolkit is aimed at helping and supporting tax agents and advisers by providing guidance on the errors we find commonly occur in relation to Income Tax Losses. It may also be helpful to anyone who is completing an Income Tax Self Assessment tax return.

This toolkit is applicable for financial years commencing 6 April 2010 for Income Tax Self Assessment tax returns. Its use is entirely voluntary.

The content of this toolkit is based on our view of how tax law should be applied. Its application to specific cases will depend on the law at the relevant time and on the precise facts.

For further information on using this toolkit and reasonable care under our penalty system see **Toolkits to help reduce errors - essential information**.

For guidance on matters not dealt with in this toolkit you should refer to our Business Income Manual (BIM):

<http://www.hmrc.gov.uk/manuals/bimmanual/index.htm>

Areas of risk within Income Tax losses

If a person who carries on a business, wholly or partly in the UK, makes a loss from trading (trade losses), on the disposal of a capital asset, or within a property rental business, then they may be able to claim loss relief. The term person includes, where relevant, individual partners and trustees.

Trade losses are computed on the same basis as profits.

Certain trade losses may be offset against general income or chargeable gains in the same year. It may also be possible to carry trade losses back to earlier years or forward to subsequent years.

Claims to trade loss relief against general income or chargeable gains are restricted to businesses that trade on a commercial basis throughout the basis period of the tax year, and with a view to making a profit.

For further guidance see **BIM75701+**.

There are various trade loss relief restrictions which are not covered in this toolkit. These restrictions can be complex and further advice may be required. For further guidance see **BIM75700+** and our **Helpsheet 227**.

Loss relief restrictions may also apply where losses have been sustained in the course of a farming or market gardening trade. For further guidance on restrictions applicable to farming losses see **BIM75600+**.

For further information on errors that we find commonly occur in relation to property rental see **Property Rental Toolkit**.

For further guidance on property rental losses see **Property Income Manual (PIM) PIM4200+**.

Areas of risk relating to losses fall broadly into the following categories:

Record keeping

Good record keeping is essential as poorly kept records can result in non-allowable expenditure being incorrectly claimed or calculated. Conversely justifiable business expenditure may not be claimed, or may be quantified inaccurately, so that the availability of losses for relief may be overlooked. As there are separate rules for different types of losses, for example trade, capital and rental income, it is important to ensure that separate records are maintained for each type

of loss. Keeping an accurate record will also help ensure that any losses brought forward from an earlier year are correct.

Basic guidance on how individuals (including partners) can claim relief for trading losses is contained in [Helpsheet 227](#), which includes a working sheet to assist in keeping an ongoing summary of any losses arising and/or how they are relieved.

Availability and use of trade losses

Where an individual makes a loss in a trade, or incurs a loss as a partner in a partnership trade, the tax rules allow the losses to be set against general income and, if applicable chargeable gains in the same or the previous year. Care should be taken to ensure that losses are only relieved once.

Where a claim is made to have the losses set against general income or chargeable gains of a particular tax year they have to be set as far as possible against that income or chargeable gains. In other words it is an 'all or nothing' claim and this may result in personal allowances or the annual exemption not being utilised.

Capital losses

The general rule is that allowable capital losses are deducted from chargeable gains in the same year of assessment. Any balance will be carried forward and deducted from chargeable gains accruing in the earliest year that follows.

For basic guidance on how individuals can claim capital losses, and the record keeping requirements for capital gains and losses see [Working out your capital gain or loss - the basics](#).

Where an asset is disposed of by a partnership, each partner is responsible for claiming any allowable capital losses arising (and returning any chargeable gain) on the disposal of their interest in the partnership asset rather than the partnership itself. For further information see [Helpsheet 288](#).

Losses made in 1995-96 and earlier years did not have to be claimed - they are brought forward each year until used up. But these losses can only be used after the losses of 1996-97 and later years have been fully used. For further guidance see [Capital Gains Manual \(CG\) CG15812](#).

Losses made in 1996-97 and later years are only allowable if a claim is made quantifying the loss. For further guidance see [CG15813](#).

Partnership Losses

Once a partner has been allocated a share of partnership losses that partner is treated as if those losses arose to that partner alone. Each partner is responsible for claiming the loss relief appropriate to their own personal circumstances.

There are particular issues to consider around the date a partner joins and leaves a partnership. For further guidance see [BIM72260](#).

Using links within this document

[Blue underlined text](#) are links within this document.

[Green bold text](#) are hyperlinks to external documents on the internet (access to the internet is necessary to view these).

We have a range of services for people with disabilities, including guidance in Braille, audio and large print. Most of our forms are also available in large print. Please contact any of our Helplines if you need these services.

<http://www.hmrc.gov.uk/contactus/particular-needs.htm>

Checklist Income Tax losses

		Yes	No	N/A
1	Have all relevant adjustments been made to arrive at the allowable trade loss for tax purposes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	If a claim for trade loss relief is made, is the claim within the relevant time limit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Where trade loss relief is claimed against general income and/or chargeable gains of the same and/or previous year do the claims meet the necessary requirements ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Have any trade losses brought forward been used correctly and set in full against the first available profits of the same trade?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Where trade losses are set against income that is not liable for Class 4 NICs has the correct amount of loss been carried forward for Class 4 NICs purposes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Where a claim is made to set off trade losses from the first four tax years of a new trade against general income of earlier years , have all conditions been satisfied?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	If there are trading losses in overlapping basis periods have they been correctly apportioned?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	Where the business has permanently ceased trading has any terminal loss been calculated and utilised correctly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Have any capital losses arising in the year, or brought forward from an earlier year been utilised correctly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	If a partnership profit or loss allocated on a commercial basis produces a mixture of notional profits and losses have all the appropriate re-allocations been made?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Explanation and mitigation of risks

1. Have all relevant adjustments been made to arrive at the allowable trade loss for tax purposes?

Risk

Trade losses are computed on the same basis as trade profits. For example capital expenditure, depreciation and expenditure that is not incurred wholly and exclusively for the purposes of the trade, such as personal expenses and private use of assets, should normally be disallowed.

Further adjustments may be required, for example where capital allowances are claimed, to establish the allowable loss for tax purposes. See explanation below.

Mitigation

Ensure that all relevant adjustments are made to the accounts profit or loss to arrive at the loss allowable for tax purposes.

Explanation

The profit or loss in the accounts prepared in accordance with generally accepted accounting practice may require adjustment to arrive at the allowable loss for tax purposes. For example, adjustments should be made for any:

- necessary adjustments such as depreciation and private use
- capital allowances
- balancing charges/allowances

For further information on the different types of claim for trade loss relief and any appropriate restrictions see [Q2](#).

There are separate rules for losses arising from the sale of capital assets, see [Q9](#).

Losses from furnished holiday lettings and from other property rental should be excluded from trading losses and dealt with separately for tax purposes.

For further guidance see [PIM4130+](#) and [PIM4200+](#).

For further information on errors that we find commonly occur in relation to property rental see [Property Rental Toolkit](#).

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2. If a claim for trade loss relief is made, is the claim within the relevant time limit?

Risk

Trade losses are relieved in a number of ways and different time limits apply depending on the type of loss relief being claimed. See the table below.

Mitigation

Where a claim to loss relief is to be made, ensure that it is submitted with all necessary supporting information and within the relevant time limit.

For further guidance see [BIM75210](#).

Late claims may be accepted only in limited circumstances. For further guidance see [BIM75230](#).

Explanation

A claim may be made to set a trade loss for a tax year against profits of the same trade of the previous year or later years. Trade losses may also be relieved against general income or against general income and chargeable gains in the year the loss arises or the previous year or

in particular circumstances, against general income of earlier years. There are different time limits for each type of claim - see table below.

How the trade loss can be utilised	Normal time limit	Loss relief provision
Set off against general income and chargeable gains of the same tax year or previous tax year - see Q3 .	Within 12 months from 31 January after the end of the tax year in which the loss occurs	S64 and S71 Income Tax Act 2007 and S261B Taxation of Chargeable Gains Act 1992
Carry forward and set against future trade profits of the same trade - see Q4 .	Within four years from the end of the tax year in which the loss occurs	S83 Income Tax Act 2007
Set off of new business trade losses against general income of the three tax years before the year of loss, with relief given for earlier years first - see Q6	Within 12 months from 31 January after the end of the tax year in which the loss occurs	S72 Income Tax Act 2007
Set off of terminal losses against profits of the same trade of the final tax year and the previous three years, with relief given for later years first - see Q8 .	Within four years from the end of the tax year in which the trade ceases	S89 Income Tax Act 2007

A claim may be made in a return or letter. Any claims must be for the full amount of the loss made, less any of that loss already utilised. Partial claims are not allowed. This means that a loss set against income for a particular year must be set as far as possible against that income, even if this means that personal allowances available for that year are not fully utilised.

For further guidance see [BIM75215](#) and [Self Assessment Claims Manual \(SACM\) SACM3015+](#).

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3. Where trade loss relief is claimed against general income and/or chargeable gains of the same and/or previous year do the claims meet the necessary requirements?

Risk

Where a trade loss is set against general income and/or chargeable gains of the loss making year and/or the previous year there are certain requirements.

For example where there are claims for the current year and previous year the individual must stipulate the priority of the claims. For trade losses carried back to the previous year where there is already a loss relief claim against general income of that year the loss arising in the previous year takes priority to the loss carried back.

In addition where there is a claim to set trade losses against chargeable gains only the trade loss in excess of the general income for the relevant year can be set against chargeable gains.

Mitigation

Where a claim is made for a trade loss to be set against general income and/or chargeable gains of the loss making year and/or the previous year, consider which claim for relief takes priority.

For further guidance on the priority of relief see [BIM75410](#).

For further guidance on relief against chargeable gains see [BIM75420+](#).

When setting trade losses against general income and/or chargeable gains ensure that the loss is used in full, even if this results in personal allowances or the annual exemption not being utilised. Any remaining unused loss may be the subject of a different claim.

There were special rules for losses arising in 2008-09 and 2009-10. Those rules allowed any losses remaining unused, after relief had been given against income of the same year or the earlier year, to be carried back and set against profits of the same trade for up to three earlier years, subject to certain restrictions. **These rules do not apply in 2010-11.**

For further guidance on these temporary rules see [BIM75415](#).

Explanation

Where the loss is subject to claims for both the current year and the previous year, or against general income and/or chargeable gains, ensure that each separate claim is made in the correct order. The year of loss, amount of loss and how it is to be utilised should be specified in each claim. Claims to set losses against general income of the same year must be made, if possible, in a return, so it is reflected in the Self Assessment for the year.

For further guidance see [BIM75205](#) and [SACM11010](#).

A claim to carry back losses to an earlier year does not affect the Self Assessment for the earlier year. Although the claim is quantified by reference to the earlier year, it remains a claim for the later year as that is the year in which the loss arose. Consequently where losses are relieved by reference to an earlier year, the tax liability for the earlier year does not change. The relief is instead given by means of a tax credit (repayment/set-off). This means that any repayment supplement will be calculated by reference to the due dates for the later year.

For further guidance see [SACM11005+](#).

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4. Have any trade losses brought forward been used correctly and set in full against the first available profits of the same trade?

Risk

Where trade losses are brought forward from earlier years, they must be used in full against the first available profits arising from the same trade. There is no provision for a smaller amount to be relieved or for the loss to be set against general income or profit from another trade. For example a self-employed builder who also has a retail business cannot have losses brought forward from one business set against the profits of the other.

Mitigation

Ensure that the correct trade loss figure is brought forward and is fully utilised against the first available profits from the same trade until it is completely used up.

It is recommended that a separate record of the losses from each trade/business, together with details of how each loss has been utilised is maintained.

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5. Where trade losses are set against income that is not liable for Class 4 NICs has the correct amount of loss been carried forward for Class 4 NICs purposes?

Risk

A Class 4 NICs loss is independent of an Income Tax loss. An Income Tax loss can be set off against income that is not liable for Class 4 NICs, for example an Income Tax loss can be set off against employment income liable for Class 1 NICs. In this case the Class 4 NICs loss has not been used and can be carried forward against future Class 4 NICs profits of the same trade.

As a result Income Tax trading losses carried forward may be different from NICs losses carried forward.

Mitigation

Ensure that losses set against non-trading income, or against chargeable gains, are carried forward to be used against future Class 4 NICs profits of the same trade appropriately. Ensure that when such losses are brought forward and utilised in the year they are included in the relevant box on the Income Tax Self Assessment tax return.

For further guidance see **National Insurance Manual (NIM) NIM24610** and **NIM24615**.

In such circumstances it is recommended that separate records of losses for both Income Tax and Class 4 NICs purposes are maintained to ensure that any claim made in subsequent years is accurate.

Example

Mrs K's income for **year one**:

Employment income	£ 20,000
Profit from her profession as an author	£ 5,000
Share of a partnership loss from a trade	(£10,000)

A claim to loss relief is made to set the loss against her general income of the year.

She has general income liable to Income Tax in the year of £25,000. She can relieve the whole of her loss for tax purposes of £10,000.

She has other profits liable for Class 4 NICs of £5,000; hence she can only set off £5,000 of her Class 4 NICs loss. The balance of £5,000 is available to be carried forward against her share of the Class 4 NICs profits of the partnership.

Year two:

Employment income	£20,000
Profit from her profession as an author	£ 5,000
Share of a partnership profit from a trade	£ 1,000

Mrs K does not have any tax losses brought forward as all the tax loss relief was used in year one.

She has a Class 4 NICs loss of £5,000 from the partnership brought forward from year one. £1,000 of the Class 4 NICs loss can be set against her share of the partnership profit liable for Class 4 NICs. The balance of £4,000 is carried forward against later years.

She cannot set the £4,000 Class 4 NICs loss against the £5,000 profit from her profession. This is because a Class 4 NICs loss can only be carried forward to be set against a profit of the same trade.

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6. Where a claim is made to set off trade losses from the first four tax years of a new trade against general income of earlier years, have all conditions been satisfied?

Risk

Trade losses arising in any of the first four tax years from commencement of that trade can be set against total income of the previous three tax years before that in which the loss was made under S72 Income Tax Act 2007. The loss must be first set against the earliest year - it is not possible to select a particular year from the three previous years for set off. If relief is claimed, the set off is made to the fullest extent possible as partial claims are not permitted. For example, a claim under S72 Income Tax Act 2007 for the 2010-11 loss - the loss is first allocated to 2007-08, then against 2008-09, finally against 2009-10.

Where relief under S72 Income Tax Act 2007 is claimed those losses cannot be set against chargeable gains.

Mitigation

Where an individual makes a loss in a trade in any of the first four tax years, from commencement of that trade, ensure that the loss is set against total income for the previous three tax years, with the earliest year first. The loss has to be set off in full as partial claims are not permitted.

For further guidance see [BIM75450](#).

Explanation

This relief is available by reference to the time when an individual first carries on a specific business, either as a sole trader or in a partnership, not to the generic category of trade. For example, a publican who owned a pub for many years sold it and bought another pub. Although the trader remains a publican throughout, the second pub is not the same trade as the first pub. Relief may therefore be claimed under S72 Income Tax Act 2007 in respect of any loss made in the early years of the second pub.

It is not possible for an individual to make a claim under S72 Income Tax Act 2007 where they have ceased the trade for a time and then recommence it at a later date, after year four.

For further guidance see [BIM75455](#).

An individual may choose whether to claim relief under S72 or S64 Income Tax Act 2007 or both depending on the level of general income. Where claims are made under both sections the individual needs to specify which relief to receive first.

Any losses not relieved under either S64 or S72 Income Tax Act 2007 are carried forward under S83 Income Tax Act 2007.

For continuing partnerships the carry back loss rules for the first four years of a new trade only apply to a new partner, not to the continuing partners. A partner who leaves a partnership and then rejoins at a later date is only entitled to relief under S72 Income Tax Act 2007 by reference to the date of first joining the partnership, not the date of rejoining, since it is the same business as that previously carried on.

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7. If there are trading losses in overlapping basis periods have they been correctly apportioned?

Risk

When the basis periods overlap, for example in the early years of a new business or where there is a change of accounting date, any loss falling in the first/earlier basis period cannot be used again in computing the profit or loss of the second/later basis period. If the loss is not

correctly apportioned between the overlapping basis periods, losses may not be correctly relieved.

Mitigation

Ensure that losses are apportioned to the relevant basis periods appropriately. Apportioning losses to basis periods follows the same rules as for profits, subject to the overriding condition that a loss can only be relieved once.

Where there is an overlap between two successive basis periods, it may be necessary to add or apportion the results of two or more accounting periods to compute the profit or loss of the second basis period.

Ensure that any loss falling in the first period is not used again in computing the profit or loss of the second period. When computing the profit or loss of the second basis period, any loss used in the computations for the first period is deemed to be nil.

Example

Accounts are made up to 5 April each year until 2010-11 when accounts are prepared for the six month period 6 April 2010 to 30 September 2010. The business then continues to prepare accounts to 30 September year end.

The accounts show:

12 months to 5 April 2010	Loss (£40,000)
6 months to 30 September 2010	Profit £10,000

The basis periods are:

<u>Tax Year</u>	<u>Basis Period</u>
2009-10	6 April 2009 to 5 April 2010
2010-11	1 October 2009 to 30 Sept 2010

These two basis periods overlap. The six month period from 1 October 2009 to 5 April 2010 is an overlap period. The loss of that period is taken into account in computing the profit or loss of 2009-10 and cannot be used again in computing the profit or loss of 2010-11; losses can only be relieved once.

If the result for the 12 months to 5 April 2010 had been a profit approximately 6/12 of this profit would have been used in the computation for 2009-2010 and 2010-2011, giving rise to an 'overlap profit' for which overlap relief can be given in a later year.

But as the result for the 12 months to 5 April 2010 is a loss, the loss for the overlap period is taken as nil in computing the profit or loss of 2010-11.

The profit or loss for the relevant basis periods are therefore

<u>Tax year</u>	<u>Basis period</u>	<u>Profit/(loss)</u>
2009-10	12 months to 5 April 2010	(£40,000)
2010-11	12 months to 30 September 2010	nil + £10,000 = £10,000

The full amount of the loss for the 12 months to 5 April 2010 of £40,000 is therefore a loss of 2009-10 and is available for a claim to loss relief for that year.

For further guidance see **BIM71065** and **BIM71070**.

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8. Where the business has permanently ceased trading has any terminal loss been calculated and utilised correctly?

Risk

When a business permanently ceases to trade, any terminal loss must be calculated for the final 12 months of trading which may not necessarily be the final period for which accounts have been produced.

The terminal loss must be first set against any profits of the same trade in the year of cessation and then the profits of the same trade for up to the previous three tax years, with relief given for the latest year first. See example below.

Mitigation

Confirm that the trade has permanently ceased and that the correct date of cessation has been identified. Ensure that the terminal loss relief claim is restricted to the loss made in the final 12 months of trading.

Explanation

When a trade permanently ceases, any loss made in the final 12 months of trading (the terminal loss) can be set against profits of the same trade in the tax year in which the trade ceased and the three earlier tax years.

The terminal loss is calculated as follows:

- 1 Identify the basis period and assessable profits, before loss relief, for the year of cessation and the previous year.
- 2 Calculate the loss for the period 6 April preceding the date of cessation to the date of cessation. Add to this any unused overlap relief.
- 3 Calculate the loss for the period starting 12 months before the date of cessation and ending on the following 5 April. This may require aggregating profits with losses. If this produces an overall profit at either step 2 or step 3, the result for the period for these purposes should be taken as nil.
- 4 Add the amounts at steps 2 and 3 to arrive at the amount of terminal loss relief available.

Any loss of the year of cessation can, as an alternative or in addition to terminal loss relief, be set against general income or chargeable gains for the year of cessation and/or the previous year (S64 Income Tax Act 2007). The S64 claim is for the loss of the basis period for the final tax year plus any unused overlap relief, to the extent that these have not been allowed as a terminal loss.

For further guidance see [BIM75480](#).

Transitional relief may be available for any trade/partnership that started before 6 April 1994. Transitional relief is now also referred to as overlap relief.

For further guidance see [BIM71105](#).

An individual partner can claim terminal loss relief when they leave the partnership, whether or not the partnership trade itself ceases at the same time.

For further guidance see [BIM72230](#).

Example

A business draws up accounts to 30 September annually. The business ceases on 30 June 2010. The accounts for the last two years show the following:

12 months to 30 September 2009	Profit	£12,000
9 months to 30 June 2010	Loss	(£ 9,000)
Unused overlap relief		£ 2,500

The following steps should be used to identify the total terminal losses available:

Step 1 - Identify the basis period and assessable profits, before loss relief, for the year of cessation and the previous year.

<u>Year</u>	<u>Basis period</u>	<u>Assessable profit</u>
2009-10	1 October 08 to 30 September 09 (12 months)	£12,000
2010-11	1 October 09 to 30 June 10 (9 months)	Nil

Step 2 - Calculate the loss for the period 6 April to date of cessation and add to this any unused overlap relief.

The loss for the three month period 6 April 10 to 30 June 10 is ($£9,000 \times 3/9$)	(£3,000)
plus overlap relief	<u>(£2,500)</u>
Loss made in year of cessation	(£5,500)

Step 3 - Calculate the loss made in the period starting 12 months before the date of cessation and ending on following 5 April - the loss of the nine month period 1 July 09 to 5 April 10.

Period 1 October 09 - 5 April 10 ($£9,000 \times 6/9$)	(£6,000)
Less profit for the period 1 July 09 - 30 September 09 ($£12,000 \times 3/12$)	<u>£3,000</u>
Loss for 2009-10	(£3,000)

Step 4 - Add the amounts at steps 2 and 3 to arrive at the amount of terminal loss relief available.

Total terminal losses available ($£5,500 + £3,000$)	(£8,500)
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Losses should be apportioned on a daily basis. However HMRC may accept other time bases such as weeks or months (as shown in this example), provided that the method is reasonable and applied consistently.

In this example no profit of the trade is assessable for the year of cessation. The £8,500 terminal loss is set against the profit of the previous year. No terminal loss remains to set against profit of the trade in the two earlier years.

The balance of any loss not relieved by terminal loss relief under S89 Income Tax Act 2007 can be claimed against general income under S64 Income Tax Act 2007.

In this example, total losses available for relief are £11,500 (losses of £9,000 in the final accounting period plus £2,500 overlap relief) less terminal loss relief utilised £8,500 leaving a balance £3,000 available for claim under S64 Income Tax Act 2007.

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9. Have any capital losses arising in the year, or brought forward from an earlier year been utilised correctly?

Risk

Capital losses should normally only be set against chargeable gains. Allowable capital losses of the year and capital losses brought or carried forward are set against chargeable gains in accordance with specific rules (see explanation below).

Capital losses arising in the same year as a capital gain should be first set against the gain in full, even if that means the annual exempt amount is not utilised.

Capital losses brought forward should be set against the **net** chargeable gains of the year (ie after first setting off any capital losses of the current year and then only on the remainder of the gain that exceeds the annual exemption amount).

Mitigation

Check that any capital losses are only set against chargeable gains. Ensure that any capital loss arising in the year is first set in full against any chargeable gains arising in the year and the remaining loss carried forward.

Where losses have been brought forward and set against chargeable gains, ensure that the loss is only set against gains in excess of the annual exempt amount (see example below).

Explanation

To arrive at the correct amount of chargeable gains taxable for the year, ensure that the following steps are followed in the order prescribed:

- 1 Add together all the allowable capital losses in the year of assessment and deduct them from the total chargeable gains of the year. This step must be followed, as it is not possible to use only an element of the allowable losses even if that means the annual exempt amount is not utilised in full.
- 2 If any chargeable gains remains after step 1 deduct any unused allowable losses brought forward from earlier years, but not so as to take the net chargeable gains below the annual exempt amount. Any losses brought forward which are not utilised are carried forward and may be utilised in later years.
- 3 Finally, any excess losses may be carried back from the year of assessment in which a person dies, but not so as to take the net chargeable gains below the annual exempt amount. For further guidance see **CG21550** and **CG15811**.

For 2010-11 onwards the general rule is that losses may be set off against gains in whatever way is most beneficial in terms of reducing the Capital Gains Tax payable, see **CG21600**. However, S4B(3) Taxation of Chargeable Gains Act 1992 makes it clear that this general rule does not overrule existing legislation that limits the gains from which allowable losses may be deducted.

For further guidance see **CG21610**.

Example

Mr A has unused allowable losses of £10,500 from 2009-10.

In 2010-11 he has gains of £16,300 and losses of £3,500.

To compute the amount of chargeable gains assessable for 2010-11:

Step 1 - Add all losses of the year of assessment and deduct them from total chargeable gains for the year:

Total gains	£16,300
Less total losses	<u>(£3,500)</u>
Net gains	£12,800

Step 2 - Deduct the annual exempt amount to establish the amount remaining chargeable that can then be covered by the losses brought forward:

Net gains	£12,800
Less annual exempt amount	<u>£10,100</u>
Balance remaining chargeable	£ 2,700
Less losses brought forward	<u>(£ 2,700)</u>
Amount chargeable to Capital Gains Tax	Nil

The assessment is the gains of £16,300 less losses of £6,200 less annual exempt amount of £10,100.

The losses to be carried forward and available to set against gains that arise in future years is £7,800 (£10,500 brought forward less £2,700 used = £7,800).

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10. If a partnership profit or loss allocated on a commercial basis produces a mixture of notional profits and losses have all the appropriate re-allocations been made?

Risk

For tax purposes the allocation of profits or losses between partners must result in an apportionment of the actual profit or loss made by the partnership. It is not possible for one partner to have a taxable profit if the partnership as a whole shows a loss or vice versa.

Mitigation

Where the initial allocation using the commercial profit sharing arrangement for all the partners produces a mixture of notional profits and losses ensure that the allowable partnership loss or profit is re-allocated appropriately. See example below.

For further guidance see [BIM72245](#).

Explanation

Once the partnership profits or losses have been computed for any accounting period these should be allocated to the individual partners according to the commercial profit sharing arrangements in force for the period of the accounts.

For further guidance on how any non-trading income of the partnership should be allocated and the partners' basis period see [BIM72275+](#).

Example

A, B and C are in partnership. The partnership makes a loss of (£1,600). A is entitled to a salary of £4,400, and profits/losses are shared as follows:

A = 25%

B = 25%

C = 50%

The partnership loss is initially allocated as follows:

	Total	A (25%)	B (25%)	C (50%)
Salaries	£4,400	£4,400	-	-
Balance of loss	<u>(£6,000)</u>	<u>(£1,500)</u>	<u>(£1,500)</u>	<u>(£3,000)</u>
Initial allocation	(£1,600)	£2,900	(£1,500)	(£3,000)

It is not possible for tax purposes for one partner to have a profit when the partnership as a whole makes a loss.

A has made a notional profit of £2,900, so he is taken to have made neither a profit nor a loss. B and C have been allocated an aggregate notional loss of (£4,500).

The actual loss made by the partnership in the year is (£1,600). This is reallocated between B and C as they are the partners who made losses in the initial allocation. The re-allocation is in proportion to the notional loss initially allocated to each partner, i.e. in the ratio

Partner B $\frac{£1,500}{£4,500} \times (£1,600) = (£533)$

Partner C $\frac{£3,000}{£4,500} \times (£1,600) = (£1,067)$

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