

2006 Pre-Budget Report



PBRN 18

6 December 2006

A TARGETED ANTI-AVOIDANCE RULE FOR CAPITAL GAINS TAX

Who is likely to be affected?

1. Persons who take part in schemes or arrangements to gain a tax advantage from capital losses, including individuals, trustees and personal representatives.

General description of the measure

2. A targeted anti-avoidance rule (TAAR) will be introduced to counter schemes to create and use artificial capital losses to avoid tax. The measure will ensure that allowable capital losses are restricted to those arising from genuine commercial transactions.

Operative date

3. The changes will take effect in relation to capital losses arising on disposals on or after 6 December 2006.

Current law and proposed revisions

4. The Taxation of Chargeable Gains Act 1992 (TCGA) provides that, unless there is an express rule to the contrary, a capital loss is computed in the same way as a capital gain, and a loss will be an "allowable loss" if a gain arising on the same transaction would have been a chargeable gain (section 16 TCGA).
5. An express exception to this general TCGA rule was introduced in Finance Act 2006. A loss accruing to a company is not an allowable loss if it arises as part of arrangements which have a tax advantage as their main purpose, or one of the main purposes (section 8 TCGA). The intention of this provision is to deter the creation and use of artificial capital losses by companies liable to corporation tax on their chargeable gains.
6. The measure extends this anti-avoidance rule for companies to persons liable to capital gains tax (individuals, trustees and personal representatives). Where a person has made arrangements, and a main purpose of those arrangements is to gain a tax advantage by creating an

artificial capital loss, any resulting loss will not be an allowable loss for the purposes of capital gains tax, income tax or corporation tax.

7. The measure will introduce, in a new section 16A TCGA, a general rule covering capital gains tax, income tax and corporation tax, and hence replacing the corporation tax provisions introduced into section 8 TCGA by Finance Act 2006, without changing their effect.

Further advice

8. Further information on the scope of proposed changes, draft legislation, an explanatory note, draft guidance and a statement of principle are available on the HM Revenue & Customs website.
9. If you have any questions about these changes, or comments on the draft legislation or guidance, please contact Roger Willoughby on 0131 777 4143 (roger.willoughby@hmrc.gsi.gov.uk). Information about Pre-Budget Report measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk