

INCOME TAX LOSSES FOR SHARES YOU HAVE SUBSCRIBED FOR IN UNLISTED TRADING COMPANIES

This Help Sheet explains how you can make a negligible value claim and a claim for allowable capital losses on shares to be deducted from your income. The losses you deduct from your income cannot also be deducted from your chargeable gains. The losses must arise on the disposal of shares in an unlisted trading company. You must have subscribed for the shares. You may claim for relief against your income for the year the loss was made or the previous year.

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 liability, ask your Inland Revenue office or tax adviser.

NEGLIGIBLE VALUE CLAIMS

If you own an asset which has become of negligible value you may make a claim to have the asset treated as though it had been sold and immediately reacquired at the time the claim is made for an amount equal to its value, 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, so if its value has not altered while you owned it a claim is not possible. An asset is of negligible value if it is worth next to nothing.

A loss arising from the deemed sale and reacquisition of the asset arises when the claim is made. But 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.

So if you make a negligible value claim during the tax year 2000-2001, any loss resulting from the claim will arise in that year. Alternatively, you may be able to claim the loss in 1998-1999 or in 1999-2000, provided all the conditions for the claim were also satisfied at the time the loss is sought.

If you want to make a claim for 2000-2001, write giving details of your claim to your Tax Inspector.

If you want to make a claim in respect of an asset you own that had become of negligible value during 1999-2000, in your Tax Return for 1999-2000, you should provide details of your claim (including a date during 1999-2000 when you want to be treated as if you had disposed of the asset) in column G, and include the loss in box 8.2, on Page CG3 of your Capital Gains Pages.

During the tax year 2000-2001 you may also be able to claim relief at a time falling in the tax year 1998-99 by amending your 1998-99 Tax Return on or before 31 January 2001 or, after that date, by sending a notice to your Tax Inspector.

As described in the following paragraphs, Income Tax losses may be available following a negligible value claim in respect of shares you have subscribed for in an unlisted trading company.

Example 1

You subscribed £10,000 in 1985 for ordinary shares in a company making furniture. The business failed in August 1999, the shares becoming worthless. 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 1999-2000 or against your income for 1998-99.

IN WHAT TYPE OF COMPANY SHOULD I HAVE SUBSCRIBED FOR SHARES?

The company must satisfy the following conditions:

- it has always been resident in the UK, **and**
- none of its shares have been listed on a recognised stock exchange since the company was incorporated or, if later, one year before you subscribed for the shares, **and**
- the company must be:
 - if you subscribed for the shares before 6 April 1998, a trading company
 - if you subscribed for the shares on or after 6 April 1998, an eligible trading company.

See the section headed 'Do all trading companies qualify?' for further details. A trading company is 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.

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 2 for further details.

DO ALL TRADING COMPANIES QUALIFY?

No. Companies carrying on some trades do not qualify. If you subscribed for the shares 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
- building societies or registered industrial and provident societies.

If you subscribed for the shares 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 eligible for the purposes of the Enterprise Investment Scheme (see *Help Sheet IR297: Enterprise Investment Scheme and Capital Gains Tax*)
- those not pursued on a commercial basis and in such a way that they would be reasonably expected to make a profit
- building societies or registered industrial and provident societies.

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 tests.

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 paragraph above headed 'How long must the company have been a trading company?'

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 subscribed for and transferred to you during their life time. 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 negligible value claim, **or**
- an arm's length bargain for full consideration, **or**
- the dissolution or winding-up 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 Inland Revenue office for details. Any part of the allowable loss that is not set against income remains an allowable loss to be deducted from chargeable gains. Remember any loss you use against your income is not available to use against capital gains.

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 then the loss is set:

- **first**, against the income of the year in which the loss occurred
- **second**, against your income of the preceding year.

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 1999-2000 can be claimed against your income in 1999-2000 or 1998-99 or both years depending on the amount of your income and losses.

Example 2

In 1985 you subscribed £50,000 for ordinary shares in a trading company. In 1999 the company fails and you make a negligible value claim for 1999-2000. You have an allowable loss of £50,000. Your income and Income Tax personal allowances for 1998-99 and 1999-2000 are as follows:

	1998-99	1999-2000
Income	£30,000	£32,000
Personal allowances	£4,000	£4,400

You may claim that the allowable loss on the shares be set against your income for 1999-2000 and any balance 1998-99. The relief is given as follows:

	1999-2000	1998-99
Income	£32,000	£30,000
<i>minus</i> loss	<u>£32,000</u>	<u>£18,000</u>
	zero	£12,000
<i>minus</i> personal allowances		<u>£4,000</u>
Taxable income		<u>£8,000</u>

Remember that the allowable loss on the shares used in 1999-2000 may not be restricted to preserve your personal allowances.

There is an order of priority if you are also claiming a deduction for other losses. In 1999-2000 this is:

- **first**, allowable capital losses on shares for 1999-2000
- **second**, allowable capital losses on shares carried back from 2000-2001
- **third**, other Income Tax losses.

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

HOW TO CLAIM THE RELIEF?

The relief has to be claimed within two years of 31 January in the year in which the loss was made. An allowable loss made in 1999-2000 has to be claimed on or before 31 January 2002.

If you make an allowable loss in 1999-2000 you can claim the relief for 1999-2000 or 1998-99. You can make those claims as follows:

1999-2000 You can claim the relief by making an entry in box 8.13A on Page CG8. You must also give details of the capital losses that are the subject of your claim on Page CG2.

1998-99 Like 1999-2000, you can claim the relief by making an entry in box 8.13B on Page CG8 and by giving details of the capital loss on Page CG2. Any relief due for 1998-99 will be given as an adjustment to the amount of tax for 1999-2000.

If Income Tax relief for capital losses is claimed, the losses cannot also be set against capital gains at column K1 on Page CG3.

If you made an allowable loss in 1998-99, you have until 31 January 2001 to claim relief against your income of 1998-99 or 1997-98 by amending your 1998-99 Tax Return.

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