

Allowable losses (S.546)

Part 19-02-05

This document should be read together with sections 29, 31, 546 and 546A of the Taxes Consolidation Act 1997

See also [Tax and Duty Manual Part 02-03-01](#) - Persons chargeable

See also [Tax and Duty Manual Part 02-03-04](#) - Amount chargeable

See also [Tax and Duty Manual Part 19-02-05A](#) - Restriction on the allowance of capital losses in accordance with section 546A TCA 1997

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Note: This Manual is currently subject to review and may not reflect up-to-date position. Most recent version.

Introduction

Section 546 of the Taxes Consolidation Act 1997 (“TCA 1997”) outlines the rules in respect of allowable losses. All the rules used in computing gains apply in computing losses.

5.1 Allowable loss

A loss is an allowable loss if, had there been a gain on the disposal, the gain would have been a chargeable gain. An allowable loss is computed in the same way as a chargeable gain except where there are express provisions to the contrary (see **para 5.2** and **para 5.3**).

An allowable loss may not be carried back and set against a gain in an earlier chargeable period (except on death as provided for in **section 573 TCA 1997**). Relief may not be given more than once in respect of any loss. Where relief in respect of a loss or any part of a loss has been or may be given under the Income Tax (“IT”) Acts, no relief is given for the loss against capital gains.

A deduction in respect of an allowable loss can only arise in a chargeable period when there is a chargeable gain against which that loss can be offset. A deduction of an allowable loss must be made in a tax return for the chargeable period in which there is a chargeable gain.

Where an allowable loss arises in a chargeable period and there is no chargeable gain against which it may be offset in that chargeable period, there is no requirement for a person to include the loss in a tax return for the chargeable period in which the loss arises. It is not possible to make a deduction for an allowable loss in the absence of a chargeable gain.

It follows that the time when a Revenue officer has the right to make enquiries in respect of the entitlement of a chargeable person to a deduction in respect of an allowable loss commences at the end of the chargeable period in which such chargeable person has made a return to Revenue in respect of a chargeable gain arising in the chargeable period, rather than at the end of the year following the chargeable period in which the loss was incurred where, for example, a loss was included in a return but there was no gain against which the loss could have been offset (see **section 959Z TCA 1997**).

5.2 Losses and connected person

In general, a loss which accrues to a person on a disposal to another person with whom that person is connected may not be deducted from any gain accruing to that person except on some other disposal by that person of an asset to the same other person, at a time when they are connected persons (see [Tax and Duty Manual \(TDM\) Part 19-02-09](#)).

5.3 Losses: general rules

Section 546(5) TCA 1997 provides that:

- (a) losses may not be set against gains of an earlier year, except for losses accruing in the year of death (see [TDM Part 19-03-09](#))
- (b) relief may not be given more than once in respect of any loss, and
- (c) no relief may be given against gains for any loss or any part of a loss for which relief has been or may be given under the IT Acts.

5.4 Persons neither resident nor ordinarily resident in the State

A loss which accrues to a person in a year in which that person is neither resident nor ordinarily resident in the State is not an allowable loss for Capital Gains Tax ("CGT") purposes unless, should a gain instead of a loss had accrued on the transaction, the person would have been chargeable on the gain (**section 546(4) TCA 1997**).

Thus, a person who is neither resident nor ordinarily resident in the State, is allowed relief for losses incurred on the disposal of:

- (a) land in the State
- (b) mineral assets in the State
- (c) rights in the Irish Continental Shelf area
- (d) unquoted shares deriving their value from the assets mentioned at (a), (b) and (c), and
- (e) assets of a trade carried on in the State.

(see [TDM Part 01-00-03](#) and [TDM Part 02-03-01](#)).

5.5 Deduction of allowable losses from chargeable gains

Section 31 TCA 1997 provides that CGT is charged on the aggregate amount of all chargeable gains accruing to a person for the year of assessment after deducting any allowable losses of that year and any unrelieved losses for an earlier year (but excluding losses incurred before the year 1974–75) – see Examples 3, 4 and 5 in this regard.

5.6 Destruction of assets and negligible value

Losses may be allowed

- on the destruction, dissipation or extinction of assets, or
- where the value of assets has become negligible - see [TDM Part 19-01-06](#).

Special provisions apply where the loss involves the destruction of a building - see [TDM Part 19-01-09](#).

5.7 Relief for Investment in Corporate Trades (RICT)

In relation to shares which qualify for relief, **section 508K TCA 1997** provides that, for the purposes of calculating CGT, the full acquisition cost, indexed for inflation, may be deducted from the sale proceeds.

The following provisions apply where a loss arises on a disposal of shares for which relief was allowed and not withdrawn, that is, where the amounts normally allowable as a deduction exceeds the consideration.

The amount of the deduction will be reduced by the lower of:

- the amount of the income tax relief obtained (that is, the amount of relief allowed, not the tax saved)
- or
- the amount by which the deduction exceeds the consideration.

The effect of this restriction is that the result for CGT will normally be no gain or no loss.

Example 1

An amount of €20,000 was invested in a RICT Scheme and IT relief was granted as follows:

€20,000 @ 40% = €8,000.

Seven years later the shares were sold for €6,000.

The loss is calculated as follows:

	Step 1	Step 2
Sale proceeds		€6,000
Allowable deduction	€20,000	

Reduce allowable deduction by the lower of:

- the amount of the Income Tax relief allowed, i.e. €20,000
- or
- the amount by which the deduction exceeds the consideration, (€20,000 - €6,000) i.e. €14,000

Reduction is:	€14,000	
Allowable deduction is now:		€6,000
Therefore, allowable loss:		Nil

No allowable loss arises**5.8 Losses and appeal**

Except for cases falling within **section 538(2) TCA 1997** ([TDM Part 19-01-06](#)), the quantum of a loss cannot be determined by the Appeal Commissioners until such time as a gain arises against which the loss can be offset. Where a taxpayer's computation of an unrelieved loss for CGT is not accepted by a Revenue officer, a copy of the revised computation should be sent to them or to their agent, as appropriate.

A permanent note should be kept of unrelieved losses for carry forward distinguishing between agreed amounts and unagreed amounts.

Example 2

In 2009, a taxpayer incurred a loss of €75,000 on the sale of shares in a private company and made a gain of €50,000 on the disposal of a commercial property. On examining the return and supporting documentation requested from the taxpayer, the Revenue officer disagreed with the quantum of the loss and formed the view that the amount of the allowable loss was €60,000. While the gain was relieved in full, the disputed amount of the unrelieved loss for carry forward cannot be appealed by the taxpayer at that time.

In 2020, the taxpayer had a chargeable gain of €120,000 on the sale of an investment property and deducted the unrelieved loss carried forward of €25,000 (€75,000 - €50,000) in his or her tax return for 2020. The Revenue officer made an assessment on the basis that the amount of the loss was €10,000 rather than €25,000. The taxpayer appealed the assessment.

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Example 3

Full amount of loss carried forward from prior year

During 2010, an individual (single) had a CGT loss of €25,000 on the sale of shares. He or she had no other CGT gains or losses in 2010 or in any year until 2020.

In 2020, he or she had a chargeable gain on the sale of a holiday home of €80,000 and a gain on the sale of shares of €16,270. He or she also had a loss on the sale of an industrial unit of €50,000.

Calculation of gain/loss 2020:

Gain on holiday home	€80,000
Gain on shares	€16,270
Total aggregate gains	€96,270
Less current year losses:	
Loss on industrial unit	(€50,000)
	€46,270
Less prior year losses	
Loss on shares (2010)	(€25,000)
	€21,270
Less Personal Exemption	(€1,270)
Chargeable Gain	€20,000
CGT due @ 33%	€6,600

Example 4

Unrelieved loss carried forward from prior year

During 2010, an individual (single) had a CGT loss of €25,000 on the sale of shares and a gain on the sale of agricultural land (no development value) of €15,000. He or she had no other CGT gains or losses in 2010 or in any year until 2020.

In 2020, he or she had a chargeable gain on the sale of a holiday home of €80,000 and a gain on the sale of shares of €16,270. He or she also had a loss on the sale of an industrial unit of €50,000.

Calculation of gain/loss 2020:

Gain on holiday home	€80,000
Gain on shares	€16,270
Total aggregate gains	€96,270
Less current year losses:	
Loss on industrial unit	(€50,000)
	€46,270
Less prior year losses	
Loss on shares [Balance of 2010 CGT loss unrelieved (€25,000 - €15,000)]	(€10,000)
	€36,270
Less Personal Exemption	(€1,270)
Chargeable Gain	€35,000
CGT due @ 33%	€11,550

Example 5

Unrelieved loss carried forward

During 2020 an individual (single) had a chargeable gain on the sale of a holiday home of €80,000 and a gain on the sale of shares of €16,270. He or she also had a loss on the sale of an industrial unit of €150,000.

Calculation of gain/loss 2020:

Gain on holiday home	€80,000
Gain on shares	€16,270
Total aggregate gains	€96,270
Less current year losses:	
Loss on industrial unit	(€150,000)
Balance of loss unrelieved available to be carried forward	(€53,730)