

[19.2.5] Allowable losses (S.546)

[See Also [\[19.2.5A\]](#) Restriction on the allowance of Capital Losses in accordance with section 546A TCA 1997]

- 5.1** 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 **Par. 2 & 3**).
- 5.2** In general a loss which accrues to a person on a disposal to another person with whom he is connected may not be deducted from any gain accruing to him except on some other disposal by him of an asset to the same other person, at a time when they are connected persons (see **Tax Instruction 19.2.9.9 & 10**).
- 5.3** **Section 546(5)** provides that -
 - (a) losses may not be set against gains of an earlier year, except for losses accruing in the year of death (see **Tax Instruction 19.3.9 Par.9**);
 - (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 for which relief may be given against profits or income.
- 5.4** 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 unless, if a gain instead of a loss had accrued on the transaction, he would have been chargeable on the gain (**Section 546(4)**). 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 business carried on in the State.

(see **Tax Instruction 1.0.3.1** and **Tax Instruction 2.3.1.4**).

- 5.5** Losses may be allowed
 - on the destruction, dissipation or extinction of assets, or
 - where the value of assets has become negligible - see (b) and (c) of **Tax Instruction 19.1.6.1**.

Special provisions apply where the loss involves the destruction of a building - see Tax Instruction 19.1.9.1

- 5.6** In relation to BES shares **section 506** provides that for the purposes of calculating capital gains tax, 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 BES relief was allowed and not withdrawn i.e. where the amounts normally allowable as deductions exceed the consideration::

The amount of the deductions will be reduced by the lower of

- the amount of the income tax relief obtained (i.e. the amount of relief allowed, not the tax saved) **or**
- the amount by which the deductions exceed the consideration.

The effect of this restriction is that the result for Capital Gains Tax will normally be no gain/no loss.

Example:

An amount of €10,000 was invested in a BES Scheme and income tax relief was granted as follows:

€10,000 @ 41% = €4,100.

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

The loss is calculated as follows:

Sale proceeds	6,000
Allowable deduction	10,000

Reduce allowable deduction by the lower of:-

- the amount by which the deductions exceed the consideration, €4,000, or
- the amount of the income tax relief allowed, €10,000

Reduction is	<u>4,000</u>
Allowable deduction is now	<u>6,000</u>

Therefore the Chargeable Gain/ Allowable Loss is	Nil
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NO ALLOWABLE LOSS ARISES

- 5.7** Except for cases falling within **Section 538(2)** (**Tax Instruction 19.1.6.1**, sub-head (c)) a taxpayer cannot have the quantum of a loss brought before the

Appeal Commissioners until such time as a gain arises against which the loss can be set. A permanent note should be kept of losses for carry forward distinguishing unagreed amounts which will have to be listed for appeal.

- 5.8** Where a taxpayer's computation of an unrelieved loss for Capital Gains Tax is not accepted, a copy of the revised computation should be sent to him or to his agent, as appropriate. A permanent note should be made of any unrelieved Capital Gains Tax loss.