

Allowable losses

Part 19-02-05

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

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Executive Summary

This manual describes the principles 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 **paragraphs 2 & 3**).

5.2 Losses and connected person

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 Part 19-02-09](#), **paragraph 9 & 10**).

5.3 Losses general rules

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 Part 19-03-09](#), **paragraph 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 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 unless, if a gain instead of a loss had accrued on the transaction, the person 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 Part 01-00-03](#), paragraph 1 and [Tax Instruction Part 02-03-01](#), paragraph 4).

5.5 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 (b) and (c) of [Tax Instruction Part 19-01-06](#), paragraph 1.

Special provisions apply where the loss involves the destruction of a building - see [Tax Instruction Part 19-01-09](#), paragraph 1.

5.6 BES Scheme

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, that is, 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 (that is, 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 or no loss.

Example 1

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: 4,000

Allowable deduction is now: 6,000

Therefore, the chargeable gain/loss: Nil

No allowable loss arises

5.7 Losses and appeal

Except for cases falling within **section 538(2)** ([Tax Instruction Part 19-01-06, paragraph 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 Unrelieved losses

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 them or to their agent, as appropriate. A permanent note should be made of any unrelieved Capital Gains Tax loss.