

FROM: Head of Taxation
LOCATION: 86/441
EXTENSION: 5228
DATE: 19 December 2003
REFERENCE: Y3221
SUBJECT: **INDIVIDUALS: TAX TREATMENT OF LOSSES ON INVESTMENTS IN CORPORATE MEMBERS**
ATTACHMENT: Annex
ACTION POINTS: To note
DEADLINE: None

1. The Inland Revenue has written to us about the possible non-availability of tax relief on losses that individuals may have made on shares in or loans to corporate conversion vehicles. This concerns both collective conversion companies and NameCos.
2. Individuals who are considering making claims to relief in respect of such losses are advised to read the attached letter (in the Annex to this bulletin). It expresses the Inland Revenue's concerns that individuals may make claims that do not meet the conditions for relief or that they may not realise that more than one type of claim may be involved.
3. We are circulating the letter, as requested, to draw individuals' attention, and that of their advisers, to the Inland Revenue's views.
4. This bulletin is being sent to underwriting agents, recognised auditors, personal accountants and members who deal with their own tax affairs. If you have any queries, please contact Richard Pester on 020 7327 6727.

David Clissitt
Head of Taxation



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Date 17 December 2003
Our Ref 398/P32/RAR
Your Ref

Dear David

UK tax relief for investors in Lloyd's corporates

I am writing to inform you of certain tax issues that are currently being considered by the Inland Revenue. The outcome may affect the claims to relief that individuals may make when filing their tax returns for the 2002-03 year of assessment.

As you know, over the last few years many members of Lloyd's ceased to actively underwrite as private individuals and transferred their syndicate capacity to a Nameco or to a larger Collective Conversion Vehicle (CCV). In most instances, I believe that the member's individual Lloyd's deposit was made interavailable to the Nameco or CCV for the duration of the individual's syndicate running-off period.

Some Namecos and CCVs did not trade successfully and are no longer actively underwriting as members of Lloyd's. Many of these sustained large losses with the result that investors in these corporates may not be able to recover the capital they have invested.

Depending on the particular circumstances, the tax relief that is available to an investor in such a company will generally fall into one of the following categories:-

- An actual disposal of shares owned in a company and a claim for a capital loss [section 16(2A) TCGA 1992].

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- A claim that shares still owned in a company have become of negligible value [section 24(2)(a) TCGA 1992], giving rise to a deemed disposal and, in addition, a claim for a capital loss [section 16(2A) TCGA 1992] arising from that deemed disposal.
- A claim that shares subscribed for in a qualifying trading company have either become of negligible value, giving rise to a deemed disposal, or have been actually disposed of, resulting in a capital loss, together with a claim for a capital loss [section 16(2A) TCGA 1992]. The loss may then be relieved against income [section 574(1) ICTA 1988], subject to a valid claim. However, only shares issued by insurance companies before 6 April 1998 will qualify for such relief.
- A claim that a qualifying loan made to a company has become irrecoverable, giving rise to a capital loss [section 253(3) TCGA 1992].

My immediate concerns are that investors, whether as shareholders or lenders, may make claims that do not meet the strict conditions under which relief can be given or that they may not realise that more than one type of claim may be involved.

It is important to recognise that shares must have become of negligible value. If the shares were worthless at the time of acquisition, then a negligible value claim will not succeed. In a similar manner, a loan that was irrecoverable at the time it was made cannot be said to have become irrecoverable.

The Inland Revenue is currently examining how the various conversion schemes are structured. Early next year, I hope to be able to issue more specific guidelines about when shareholders or lenders may be entitled to make any of the claims bulleted above. Meanwhile, I feel it is only fair to forewarn potential claimants that, if relief is incorrectly claimed and there is a consequent underpayment of tax or a repayment of tax that is no longer due, there may be liability to interest and penalties.

In these circumstances, I would recommend that, wherever possible, individuals in any doubt or difficulty defer their claims pending resolution of the position and the issue of further guidance, provided, of course, that they remain in time to make a claim to secure a disposal or loss in the desired tax year. Alternatively, it is likely that the officer to whom it was made will make a formal enquiry into the validity of the claim to protect the Revenue's position.

Existing guidance can be found in help sheets IR286 (negligible value claims) and IR296 (debts and capital gains tax), published on the Inland Revenue website at www.inlandrevenue.gov.uk or available from this office.

I would be grateful if you could bring the contents of this letter to the attention of the individuals concerned.

Yours sincerely

Richard

Richard Rowan
Lloyd's Technical Inspector