Superficial Loss

In certain situations where a taxpayer sells a capital property (such as a security) which triggers a capital loss, a superficial loss may occur if the same or identical property ("substituted property") is purchased by either the taxpayer or a person affiliated with the taxpayer within 30 calendar days before or after the sale, **and** either the taxpayer or the affiliated person still owns or has a right to acquire the substituted property 30 calendar days after the date of sale. If the loss on the sale is considered to be a superficial loss, it cannot be used to offset realized capital gains. The loss is suspended until the substituted property is no longer in the affiliated group. The amount of the superficial loss is added to the cost base of the substituted property. A person affiliated with a taxpayer includes his or her spouse or common-law partner, and a corporation controlled by either of them.

Example 1

Jesse purchases 100 shares of ABC Company at $100 on September 1st and sells these shares for $80 on December 10th of the same year. Jesse also purchases an additional 100 shares of ABC Company on December 3rd (prior to the sale) for $80.

Because the substituted property was purchased less than 30 calendar days before the sale and Jesse still owns the substituted property 30 days after the sale, the loss on the sale is considered to be a superficial loss.

Example 2

Jesse has 100 shares of ABC Company which she purchased for a total cost of $3,000. She sells the shares on January 1st for $1,000, realizing a capital loss of $2,000. On January 20th, Jesse's partner, Nicky, purchases 50 identical shares of ABC Company for $500. On January 30th, Nicky still owns the shares of ABC Company.

In this case, Jesse's loss on 50 of the shares sold on January 1st is considered to be a superficial loss, since Nicky acquires 50 identical shares within the 30-day period after Jesse's sale and still owns them at the end of the period. However, Jesse can still claim a proportionate capital loss of $1,000 on the other 50 shares, which can be used to offset any realized capital gains. The denied loss of $1,000 is added to the cost base of the shares Nicky purchased. Nicky's shares will now have a total cost base of $1,500 (the original $500 plus $1,000).

Note: Professional tax advice should be sought when trying to determine what constitutes an identical security, as these rules can be quite complicated.

Potential Strategies

To avoid the superficial loss rules, you may consider the following:

- Simply delay the repurchase of the identical security until after the 30 calendar day waiting period (i.e., after 31 days).
- Ensure the repurchase is made by someone other than you or someone affiliated to you. Having your parent, child, grandchild, or sibling acquire the security will allow you to claim the loss and avoid the superficial loss rules.
- Purchase a similar but not identical security (e.g., common shares of a company in the same industry as the company whose shares were disposed of, or interests in a fund whose underlying assets include shares of the company whose shares were disposed of).

Having a good understanding of the superficial loss rules will help you to avoid any unpleasant surprises at tax time. As mentioned above, ensure that you consult with a qualified tax professional for more information regarding the interpretation of an identical security.

Revised 09/05/2019