Superficial Loss

A superficial loss is deemed to occur when an individual sells a security to trigger a capital loss, and the identical security is then purchased by either the individual, their spouse or a corporation controlled by either, within 30 calendar days before or after the sale, **AND** that person still owns that security 30 calendar days after the sale date. In this case the loss on the sale will be considered a superficial loss and cannot be used to offset realized capital gains. This superficial loss amount is then added to the cost base of the substituted investment.

Example:
Jesse has 100 shares of ABC Company which she purchased for a total cost of $3,000 (cost base).

1. Jesse sells the shares on January 1st for a total of $1,000, realizing a capital loss of $2,000.
2. On January 20th, Jesse's partner Nicky purchases 50 shares of ABC Company (identical security) for a total cost of $500.
3. 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 deemed a superficial loss. This loss of $1,000 (half of the total loss of $2,000) 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).

Finally, recall that superficial losses also apply to purchases up to 30 days before the sale.

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

Because the identical shares were purchased less than 30 calendar days before the sale, this is deemed to be a superficial loss.

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:

1. Simply delay the repurchase of the identical security until after the 30 calendar day waiting period. (i.e. after 31 days).

2. Ensure the purchase is made by someone other than then you, your spouse or corporation controlled by either, then the superficial loss can be avoided. Having your children, grandchildren, or siblings

acquire the security will allow you to claim the loss and avoid the superficial loss rules.

3. Purchase a similar but not "identical security" (i.e. common shares of a company in the same industry as 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 you consult with a tax professional for more information regarding the "identical security" interpretation.

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