[19.1.9] Disposals where assets lost or destroyed or become of negligible value (S.538)

9.1 **Section 538(3)** applies **subsections (1) and (2)** of that section (see (b) and (c) of **Tax Instruction** 19.1.6 **Par.1**) to buildings and structures on land which would otherwise be outside the scope of those subsections because in law the asset is land which can never be entirely destroyed and is unlikely to become of negligible value.

A building or structure can therefore be regarded (for the purpose of giving relief under these two subsections) as a unit distinct from the land on which it stands. The person is treated as if he had also sold and immediately re-acquired the site of the building or structure (including in the site any land occupied for the purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time. Consequently, the loss relief is measured by reference to the cost of the land and building to the owner and the value of the land and building at the time when the claim was made, so that any increase in the value of the land will reduce the amount of loss on the building for which the relief is claimed. In practice, however, any appreciation in the value of the site of the building or structure would not be precisely computed or ascertained if it is clear that the appreciation in value of the site is small, being not more than 5 per cent of the loss which has been sustained on the destruction of the building or structure.

Where there are demolition costs see **Tax Instruction** 19.2.10 **Par. 3**.

Where allowable expenditure on the building or structure destroyed has already been fully covered by capital allowances, **Section 555(1)** operates to preclude relief for the loss incurred (see **Tax Instruction** 19.2.12 **Par.2** et seq.). In such circumstances, the capital loss on the destruction of the building or structure need not be computed.

Cases may arise where the appreciation in the value of the site of the building or structure is so great that it would be against the owner's interest to claim that the land and the building or structure should be regarded as separate units. In such cases, **Section 538(3)** is not applicable.

9.2 On a strict interpretation a loss arising on a deemed disposal under s 538(2) is allowable only in the year of claim. However, in practice, a claim made within twelve months of the end of the year of assessment or accounting period for which relief is sought will be admitted, provided that the asset was of negligible value in the year of assessment or account period concerned.

9.3 Where, resulting from the provisions of the Anglo Irish Bank Corporation Act 2009, shares in Anglo Irish Bank are transferred to the Minister for Finance, there will be a disposal to which Section 538 TCA 1997 applies.

Where a claim is made, the shares will be treated as of negligible value and a loss for 2009 may be calculated. If it later transpires that compensation is received, under the terms of the Act, in respect of the transferred shares, this will be treated, under Section 535 TCA 1997, as consideration for a disposal at time of receipt. In such a case, if a negligible value claim was made earlier, there will be no base cost and any chargeable gain arising shall be computed accordingly. If a negligible value claim was not made, the costs of acquisition of the shares transferred will be the base cost to be set against any compensation proceeds.

In this instance, no separate claim need be made. If the loss is being claimed for 2009, it may be set against other gains, as appropriate, in arriving at Capital Gains Tax due on 15 December In making any Capital Gains Tax return or in completing the CGT panel of an Income Tax return, the loss may be used without separate comment.

9.4 Where a partnership has written off goodwill in the balance sheet and a partner makes a subsequent disposal of his/her share in partnership assets, including goodwill, the partner is treated as realising a loss on the goodwill if he has a cost greater than nil.

9.5 Where a company is dissolved or struck-off, any property in the company's ownership at that date falls to the state by virtue of a provision in the *State Property Act 1954.* However, the former shareholders may establish entitlement to this property and so can petition the Minister for Finance to waive his/her interest in the property in favour of them. In these circumstances, title to the property reverts to the former shareholders.

9.6 As stated in Tax Briefing 52 the word 'negligible' is not defined for the purpose of the Capital Gains Tax Acts and therefore takes its normal meaning, i.e. not worth considering; insignificant. The concept of negligible value is not comparative in nature. A dramatic fall in the value of shares, e.g. due to the volatile nature of the sector in which it operates, would not give rise to a negligible value claim where the company continues to operate and its shares continue to be traded. For example, shares purchased for €10M would not be regarded as having negligible value by virtue of their value decreasing to €100,000. Clearly €100,000 is not a negligible amount. Revenue does not accept that the legislation is intended to be applicable in these circumstances particularly where there would be a ready mechanism available to the shareholder to dispose of the shares. *Section 538* is not intended to be a provision for making losses available on an artificial basis in circumstances where there would be no impediment to their actual disposal in the market place. In applying the provisions of this section the inspector will look to the specific facts in ascertaining if the value of the asset has become negligible. In the case of shares, for example, a claim will only be considered where the inspector

is satisfied that they are effectively worthless. Persons claiming relief under this section should provide their inspector with full details, supported by relevant documentation, of the circumstances in which the relevant asset has become of negligible value.