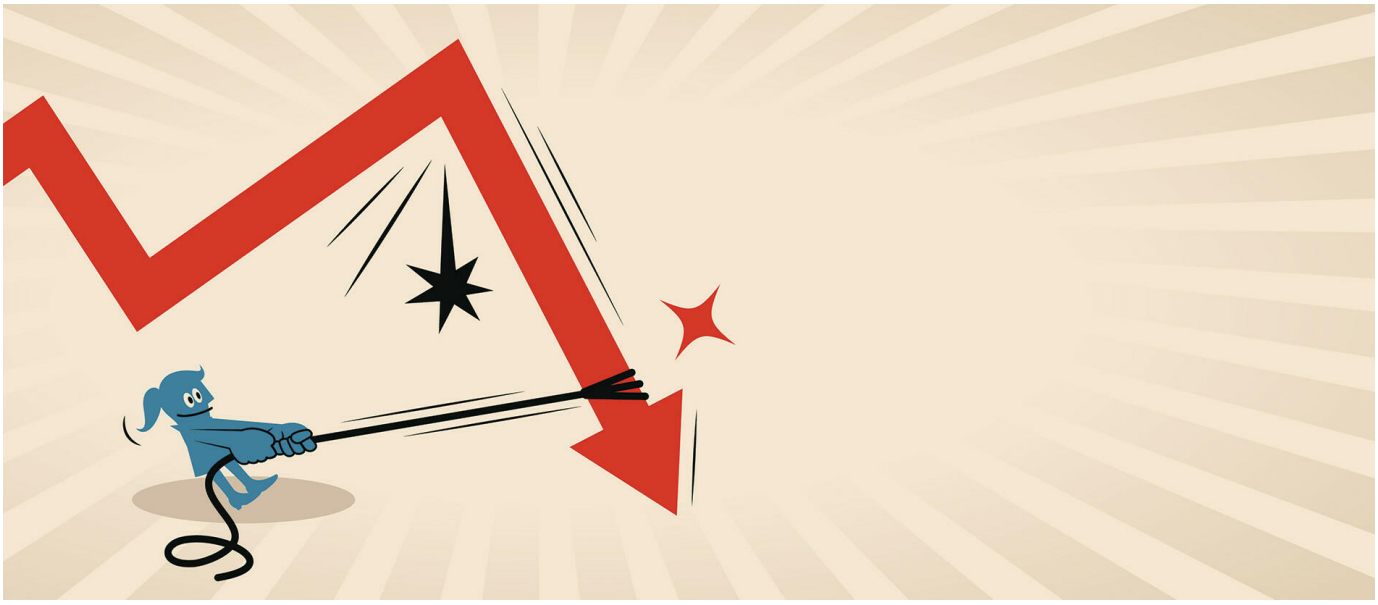
Negligible value claims: identifying the opportunities for capital gains tax savings

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Making a negligible value claim can provide significant capital gains tax savings but close examination is required to identify opportunities.

Key Points

What is the issue?

Whether making a negligible value claim or a claim for a loss on the extinction of an asset, the claim is made on the self-assessment tax return. Capital gains tax losses can be carried forward to be set against other capital gains tax liabilities indefinitely.

What does it mean to me?

Whilst the recent case of *Williams v HMRC* [2023] UKFTT 429 concerns a capital loss in respect of a loan to a trading company converted into shares, it sheds light on the importance of making a negligible value claim correctly.

What can I take away?

Farmers and farm advisers wishing to make a negligible value claim in relation to the purchased Basic Payment Scheme entitlements should learn from the *Williams* case and make sure that any claims made are in the correct form and in an appropriate time.

Claims under the Basic Payment Scheme 2023 in England needed to be in place by midnight on 15 May. After this date, entitlements have no value and will no longer be tradeable.

This results in some tax advantages. Those who bought, were given or inherited entitlements and have made taxable gains on other asset sales or other disposals have the chance to reduce their capital gains tax bill. This can be done by making what is known as a negligible value claim, or possibly a claim for a loss on the extinction of an asset. When the milk quota was abolished in March 2015, many producers made negligible value claims on their purchased quota, setting off their losses on then worthless milk quota against other capital gains.

In the case of basic payment scheme entitlement values, 100% of the purchase price can be offset against other gains, along with any agents’ and legal fees directly attributable to the transaction. Farmers should act now to plan for a claim. Farm tax advisers should be looking closely at accounts and other tax information to help to identify opportunities. While it may not affect a huge number of people, those who are affected could make significant capital gains tax savings.

For entitlements that were gifted or inherited, their value at the time of the gift or inheritance is the starting point. For tax there is no accepted definition of negligible value, but it generally applies to assets that have become worth next to nothing while the owner owns them.

Identify the claim now

Whether making a negligible value claim or a claim for a loss on the extinction of an asset, the claim is made on the self-assessment tax return, which has already been started to be submitted for the year ending 5 April 2023.

Capital gains tax losses can be carried forward to be set against other capital gains tax liabilities indefinitely. Keep a clear record of any capital gains tax losses, etc. and utilise them to the maximum.

Capital gains tax losses cannot be carried back to set against income. Therefore, where there are gains to 2022/23 above the capital gains tax annual allowance, and all losses brought forward have been used, a claim should be considered.

The different business structures

The position of a sole trader is quite simple as any losses are offset against their own gains.

Partnership gains can be complicated by the common issue of questions as to who owns what in a partnership – assets are often owned privately but used in the partnership business. Who paid for the entitlements and in whose name they are held could be key, while whose name they are registered in with the Rural Payments Agency adds another level of complexity.

What do the accounts show and are they correct? What do the partners understand ownership to be? All of these need to be addressed, and not simply for the purposes of making such a claim. Those trading as a company can offset capital losses against other capital gains in a similar way.

The importance of making the correct claim

Whilst the recent case of *Williams v HMRC* [2023] UKFTT 429 concerns a capital loss in respect of a loan to a trading company converted into shares, it sheds light on the importance of making a negligible value claim correctly.

Williams claimed a capital loss in his 2015/16 tax return from a loan made to a Sierra Leone trading company. HMRC subsequently opened an enquiry where it was explained with supporting evidence that the loan had been converted into shares in July 2009.

In its response, HMRC asked whether it should be assumed that Williams wished to make a negligible value claim under the Taxation of Chargeable Gains Act 1992 s 24 and requested further information to support it. Williams' accountants provided the required information and confirmed that the taxpayer wanted to make a negligible value claim. They also stated that the taxpayer was withdrawing his losses claim.

A few months later, HMRC wrote to the accountants stating that, in the absence of a valid negligible value claim, the loss would be removed from the capital gains tax computation and issued a closure notice soon after. Williams appealed and HMRC applied to have the appeal struck out.

The First-tier Tribunal agreed with HMRC that the tax return did not include a negligible value claim as set out in Taxes Management Act 1970 Sch 1A para 2 and that the accountants' letter did not satisfy the necessary requirements. It is necessary for a claim to be made and this letter was not 'in such form' as required. Nor did it contain a declaration to the effect that 'all of the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim', as required by para 2(4) of that schedule.

As Taxes Management Act 1970 s 31 does not contain any right of appeal against HMRC's decision not to admit a negligible value claim that is not in the required form, the First-tier Tribunal did not have the jurisdiction to determine this issue or to consider the conduct of HMRC not to allow the claim or refer Williams to the appropriate guidance. HMRC's application to strike out the appeal was therefore allowed.

Despite the result going in HMRC's favour, it was accepted by HMRC that it should have explained to the appellant what was needed to put the claim in the proper form and set out the information needed, rather than seeking clarification as to

whether a negligible value claim was being made.

Given that there is no time limit for making a claim, the taxpayer could still put in a fresh claim in valid form. However, given that this would trigger a loss in the current year (or under the Taxation of Chargeable Gains Act 1992 s 24(2) in the previous two years), it wouldn’t reinstate a claim for the original year in which Williams had intended to use the loss so it may be of little benefit to him anyway.

Farmers and farm advisers wishing to make a negligible value claim in relation to basic payment scheme entitlements should learn from the *Williams* case and make sure that any claims made are in the correct form and in an appropriate time, so check the information now. All accounts should be reviewed by tax advisers and the question asked of farm clients to their understanding.

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