Tax-loss selling allows you to offset realized capital gains with realized capital losses. If you sold assets and realized capital gains in the year and you are holding other assets in a non-registered account with unrealized losses, consider selling those securities to take advantage of the tax savings that may be offered by tax-loss selling.

Tax-loss selling usually takes place at year-end, when an investor knows his or her net taxable capital gains for the year. Any capital losses realized during the year offset any realized capital gains in that year for a net capital gain or loss. A net capital gain is taxable in the year, while a net capital loss may be carried back three years or carried forward indefinitely to apply against net capital gains.

In order to take advantage of tax-loss selling, the selling transaction must settle on or before the last business day of the year. In addition, the superficial loss rule will be triggered and the capital loss from the sale of a security denied if an identical security is purchased within 30 calendar days.

Superficial Loss Rule

If you sell a security to trigger a loss, and you or an affiliated person (e.g., your spouse, a corporation you control, or a trust where you have a major beneficial interest, including an RRSP and TFSA) purchases an identical security within 30 calendar days before or after the sale date, and you or the affiliated person still own that security 30 days after the sale date, the capital loss will be denied. This rule also applies if you or the affiliated person buys an option or right to buy the security that was sold.

Identical Securities

Shares of competing companies within the same industry should not be considered “identical securities” for purposes of the superficial loss rule, while index funds which track the same index would be considered “identical securities” under the rules. Professional tax advice will be needed to determine whether similar mutual funds are considered identical securities.

Tax-loss Selling Strategies

Given the complexities involved in tax-loss selling, professional tax advice is recommended for most situations. Below are some strategies to consider when speaking to your tax advisor about tax-loss selling.

Listed Securities

Sell securities into the market and use the proceeds to calculate loss.

Delisted Securities

A security delisted from a stock exchange does not, in itself, mean that the company no longer carries on a business or that the Fair Market Value (FMV) of its shares is zero.

Shares Of Bankrupt Or Insolvent Corporations

If the company is bankrupt, winding up, or insolvent, and it is not carrying on any business either directly or indirectly through a subsidiary, you may elect to have a deemed disposition of the shares for no proceeds (e.g., zero dollars). This triggers a capital loss of your remaining Adjusted Cost Base (ACB) and the superficial loss rule will not apply. If, during the 24 months following the date of election, the corporation (or a corporation controlled by the corporation) resumes business activities, you must recognize a capital gain equal to the capital loss, re-establishing the old ACB.

Other Securities

If no market exists for a security and the security is not a share of a bankrupt or insolvent corporation, the security must still be sold at Fair Market Value to trigger a capital loss. If selling to an arm's length buyer, the actual purchase price will be considered the FMV. If selling to a non-arm's length buyer (e.g., a relative), the onus is on you to prove the FMV based on recent bid and ask prices, or on a proper business valuation.

The transaction should be accompanied by a written Sale/Purchase Agreement, which clearly identifies the buyer and seller (including Social Insurance Numbers). The Agreement should also state what is being sold, the agreed upon price and a settlement date before year-end. In addition, it is important to retain all supporting documentation used in assessing the FMV.

The securities can then be transferred to the buyer's account or certificates given to the buyer. If certificates are not available, the Sale/Purchase Agreement should include a clause specifying that these will be delivered if and when they become available.

If the buyer of the security is your spouse or another affiliated person, the superficial loss rule applies and the capital loss will be denied. The capital loss will also be denied if the buyer is an RRSP because capital losses cannot be realized when swapping or contributing eligible securities to an RRSP or to your spouse's RRSP. However, any accrued capital gains triggered on the transfer will be fully taxable.

Your Investment Advisor should avoid personal financial dealings with his or her clients and it would therefore be inappropriate for an Investment Advisor to act as buyer. Finally, for large or complex transactions, professional tax and legal advice should be sought.

For more information, please contact your CIBC Wood Gundy Investment Advisor who can work with you and your personal tax advisor to determine if you might benefit from tax-loss selling.

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