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22nd January 2003

The Secretary
Senate Economics Reference Committee
Room SG 64
Parliament House
Canberra ACT 2600

Dear Sir

RE: Claiming of Capital Losses

I refer to Section 104-145 of the Income Tax Assessment Act 1997, relating to capital gains and losses.

At present, even though the liquidators advise that there are currently no funds available for shareholders, if there are pending proceedings in the courts they are unable to issue a notice allowing a claim for capital loss to be deducted from capital gain. The issue may take years before it is resolved by the courts and even then, it is unlikely shareholders would receive a dividend as they rank last.

In addition to this, a taxpayer may die before the relevant notice is issued and as the loss has not been available, has paid more tax. The loss remains unused, as it is not available to those who inherit. Investors can be reluctant to sell when a share is showing a good profit because the capital loss is not available to reduce the gain.

A tax return includes all income for a particular year of which a loss of capital is part and very real, so it seems very unfair to disallow the deduction because of some possible distribution in the future.

The following two companies are examples of where the Commissioner of Taxes has ruled against an allowable deduction.

1. Harris Scarfe Holdings Ltd, because of instituted proceedings in the court against the Groups' former auditors.
2. Pasmirco Ltd, because the company is in administration, not liquidation. Even though the administrator has declared that the shares have no value, would not form part of the new company, Pasmirco Resources, and would never regain any value under the proposed reconstruction of the group. A technicality only.

I suggest that the legislation is changed to allow capital losses to be claimed once the liquidator or administrator declares the shares worthless, and in the unlikely event of a distribution in later years, this could be taxed as a capital gain in the year received. I can think of no other instance where any part of a tax return is subject to some distribution, which may or may not eventuate in a future year.

Yours faithfully

C H Lade